

DEPARTMENT OF HOMELAND SECURITY

Office of Inspector General

An Assessment of the Proposal to
Merge Customs and Border Protection
with Immigration and Customs
Enforcement



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**Homeland
Security**

Preface

The Department of Homeland Security (DHS) Office of Inspector General (OIG) was established by the Homeland Security Act of 2002 (*Public Law 107-296*) by amendment to the Inspector General Act of 1978. This is one of a series of audit, inspection, and special reports prepared as part of our DHS oversight responsibilities to promote economy, effectiveness, and efficiency within the department.

Our review examined the operations and functions of Customs and Border Protection and Immigration and Customs Enforcement and the role of the Border and Transportation Security Directorate with regard to those entities. This review was conducted in response to a request from the Chairman, Senate Committee on Homeland Security and Governmental Affairs, to study the merits of merging the bureaus of Customs and Border Protection and Immigration and Customs Enforcement. It is based on interviews with employees and officials of relevant agencies and institutions, direct observations, and a review of applicable documents. We have made recommendations for improvement that we hope will result in more effective, efficient, and economical operations. To all who contributed to this report, we express our appreciation.

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Abbreviations

ABCI	Arizona Border Control Initiative
ACAP	Alien Criminal Apprehension Program
ACS	Automated Case Support System
ADIS	Arrival Departure Information System
AMO	Air and Marine Operations
APHIS	Animal and Plant Health Inspection Service
ASU	Anti Smuggling Unit
BORFIC	Border Patrol Field Intelligence Center
BTS	Border and Transportation Security Directorate
CAP	Criminal Alien Program
CBP	Customs and Border Protection
CCICC	Command and Control Intelligence Coordination Center
CD	Controlled Delivery
CFR	Code of Federal Regulations
CIA	Central Intelligence Agency
CIS	Citizenship and Immigration Services
CMC	Customs Management Center
CPA	Chief Patrol Agent
CSIS	Center for Strategic and International Studies
C-TPAT	Customs-Trade Partnership Against Terrorism
DACS	Deportable Alien Control System
DEA	Drug Enforcement Administration
DHS	Department of Homeland Security

Contents

DOJ	Department of Justice
DRO	Office of Detention and Removal
ENFORCE	Enforcement Case Tracking System
EOIR	Executive Office of Immigration Review
ER	Expedited Removal
FAMS	Federal Air Marshal Service
FBI	Federal Bureau of Investigation
FDAU	Fraudulent Document Analysis Unit
FDL	Forensic Document Laboratory
FEMA	Federal Emergency Management Agency
FIU	Field Intelligence Unit
FLETC	Federal Law Enforcement Training Center
FPS	Federal Protective Service
FTE	Full-Time Equivalent
FY	Fiscal Year
GAO	Government Accountability Office
GS	General Schedule
GSA	General Services Administration
HSA	<i>Homeland Security Act of 2002</i>
HSIR	Homeland Security Information Reports
IAFIS	Integrated Automated Fingerprint Identification System
IAIP	Information Analysis and Infrastructure Protection
IBIS	Interagency Border Inspection System
ICAT	Intelligence Collection and Analysis Team
ICE	Immigration and Customs Enforcement
IDENT	Automated Biometric Identification System
IEA	Immigration Enforcement Agent
IG	Inspector General
IHP	Institutional Hearing Program
IIR	Intelligence Information Report
IIRIRA	<i>Illegal Immigration Reform and Immigration Responsibility Act of 1996</i>
INS	Immigration and Naturalization Service
IRP	Institutional Removal Program
ISI	Immigration Security Initiative
ISRS	Image Storage and Retrieval System
JTTF	Joint Terrorism Task Force
MOU	Memorandum of Understanding
NCIC	National Crime Information Center
NTA	Notice To Appear
NTC	National Targeting Center

Contents

ODP	Office for Domestic Preparedness
OFO	Office of Field Operations
OI	Office of Investigations
OIG	Office of Inspector General
OMB	Office of Management and Budget
OPLA	Office of the Principal Legal Advisor
OPR	Office of Professional Responsibility
OTM	Other Than Mexican
POE	Port of Entry
ROI	Report of Investigation
SAC	Special Agent in Charge
SOP	Standard Operating Procedure
TECS	Treasury Enforcement Communication System
TSA	Transportation Security Administration
USC	United States Code
USCG	United States Coast Guard
USCS	United States Customs Service
USDA	United States Department of Agriculture
USMS	United States Marshals Service
USSS	United States Secret Service
US-VISIT	United States Visitor and Immigrant Status Indicator Technology
2SR	Second Stage Review

OIG

Department of Homeland Security
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Executive Summary

President George W. Bush signed the *Homeland Security Act of 2002* (HSA) into law on November 25, 2002, thereby establishing the Department of Homeland Security (DHS). In addition to creating DHS, the HSA created within DHS a Border and Transportation Security (BTS) directorate charged with customs and immigration enforcement. Initial plans for DHS outlined in the HSA assigned customs enforcement responsibilities to the Customs Service and immigration enforcement responsibilities to the Bureau of Border Security, both of which were to report to BTS.

In January 2003, the President modified the initial Reorganization Plan submitted to Congress pursuant to HSA, restructuring these BTS components. Under the modified structure, customs and immigration enforcement responsibilities were distributed across two new BTS organizations, Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE). CBP's inspectors and Border Patrol agents offered "One Face at the Border" for customs and immigration activities, while ICE investigators performed investigations on both customs and immigration enforcement cases. In addition to investigators, the ICE organization included employees responsible for the detention and removal of illegal aliens, the protection of federal buildings, and, later, federal air marshals responsible for civil aviation security.

The current organizational structure has been the subject of persistent criticism. Among those calling for change are the Heritage Foundation and the Center for Strategic and International Studies (CSIS). In December 2004, the Heritage Foundation and CSIS released a report entitled, *DHS 2.0: Rethinking the Department of Homeland Security*, which recommended the elimination of BTS and the merger of CBP and ICE.¹ The Heritage Foundation recommendations were points of focus during the first hearing of the newly formed Senate Committee on Homeland Security and Governmental Affairs in January 2005. During the hearing, the Committee

¹ Heritage Foundation and CSIS, *DHS 2.0: Rethinking the Department of Homeland Security*, December 13, 2004, p. 16.

Chairman asked the DHS Office of Inspector General (OIG) to assess the merits of merging CBP and ICE as well as the role of BTS.

In response, we undertook a review of the merits of merging CBP and ICE and the related role of BTS. In support of this review, we conducted more than 300 interviews with over 600 individuals drawn from the public, private, and non-profit sectors. We traveled to ten major cities and visited more than 63 CBP and ICE sites in the field. We met with senior leadership, program managers, field staff, and stakeholders. We reviewed budget plans, performance statistics, operating procedures, and a large volume of other information pertaining to BTS, CBP, and ICE. In so doing, we examined whether the difficulties we discovered arose with the implementation of the new organizational structure, or whether they were pre-existing conditions carried over from the former INS and USCS and inherited by the new organization.² Also, we considered other factors that may have contributed, such as funding and accounting system difficulties.³ After weeding out such issues, we found that the current organizational arrangement contributed to challenges in at least three major areas: coordination between apprehension and detention and removal efforts, coordination between interdiction and investigative efforts, and coordination of intelligence activities.

Before BTS assumed responsibility for immigration and customs enforcement, related enforcement responsibilities were performed by two different agencies with authority over virtually all related functions. The Department of Justice's (DOJ) Immigration and Naturalization Service (INS) was responsible for the bulk of immigration enforcement activities. It performed a wide range of related functions, including apprehension, border inspection, investigation, and prosecution of violations of immigration law. Concurrently, United States Customs Service (USCS), within the Department of the Treasury, bore responsibility for customs enforcement activities, including the targeting, inspection, regulation, and investigation of all cross-border traffic in goods.

² An early challenge in undertaking this review was to separate operational problems and deficiencies historic to the former agencies from those arising in the current DHS environment from the structure of BTS. Our first effort was a survey of legacy OIG and Government Accountability Office (GAO) reports and other products to identify pre-existing vulnerabilities, such as INS' historic problems with databases and software or its connectivity problems related to fingerprint biometrics, for example, so as not to confuse them with matters stemming from the structures of BTS, CBP, and ICE.

³ ICE suffered over the past two years from funding shortfalls, resulting in training, travel, recruitment, pay, and awards shortages. In this report, we did not comment on or consider complaints and problems that appeared to be solely attributable to ICE's financial condition. However, we currently have an audit underway to identify causes of ICE's budget problems and anticipate issuing a report on this subject later in 2005.

With the formation of CBP and ICE, the responsibility for customs and immigration enforcement was divided between the two agencies, such that each agency shouldered responsibility for aspects of both customs and immigration enforcement. By the same token, neither agency was given responsibility for the full scope of customs or immigration enforcement activities. CBP received INS and USCS inspections functions and the Border Patrol. ICE received INS and USCS investigations and intelligence functions and INS detention and removal staff and resources.

CBP and ICE depended heavily on each other's assistance. The new arrangement meant that enforcement efforts that were initiated by CBP, for example, now had to be completed by ICE. ICE now depended on case referrals from CBP inspectors. For their part, CBP Border Patrol agents now relied on ICE detention and removal resources to deport the aliens who they apprehended.

Under the current organizational arrangement, the role of integrating CBP and ICE activities was the responsibility of BTS. BTS' ability to serve in this capacity, however, was hampered by a lack of adequate staffing and authorities over CBP and ICE. Consequently, BTS leadership often failed to prevent CBP and ICE from working at cross-purposes, did not intervene to effectively synchronize CBP's and ICE's operations, and was slow to resolve conflicts. Our observations indicate that, as a result, CBP and ICE have not successfully coordinated efforts. Each organization engages in discrete planning and strategy development processes, and field staff are accountable to separate chains of command.

The division between CBP and ICE is marked by a clear institutional barrier. Shortfalls in operational coordination and information sharing have fostered an environment of uncertainty and mistrust between CBP and ICE personnel. Where collegial interactions should characterize relations between employees of the two organizations, we have been told of competition and, sometimes, interference. These organizational conditions have led to the articulation of mismatched priorities, competition, and, at times, operational inflexibility.

Coordination of Apprehension and Detention and Removal Operations

These adverse organizational conditions have undercut coordination between CBP's alien apprehension and ICE's detention and removal efforts. Coupled with ICE's funding and accounting difficulties, the failure to coordinate interagency planning and budgeting processes has contributed to a resource imbalance as CBP's front-end apprehension capabilities grew and ICE's downstream detention and removal did not. This imbalance has placed

increasing strain on ICE detention and removal resources as well as reduced the impact of CBP's alien apprehensions. Improved coordination between CBP and ICE could have reduced the negative impact of this resource imbalance.

Without effective, coordinated detention and removal support, the impact of CBP's apprehension efforts may be reduced.⁴ For deterrence to work, aliens considering illegal entry into the United States must fear the prospect of actual apprehension and removal. Instead, the immigration absconder backlog is continuing to grow and stood at more than 465,000 at the end of fiscal year (FY) 2004. A drop in the proportion of illegal aliens who are removed may inspire more aliens to seek illicit entry into the United States and, in turn, cause removal rates to spiral downward.

In the past, INS detention and removal resources were detailed to support apprehending components by providing transportation, guard duty, and basic processing of aliens. At BTS' instruction, some of this support continues. According to senior CBP staff, however, the level and quality of support has declined. This declining support in some areas, combined with ICE's withdrawal of support in other areas, has prompted CBP to divert staff and resources from the functions they are best suited to perform – inspections and patrol work.

Ultimately, the Office of Detention and Removal's (DRO) detention and removal functions are governed by appropriations. Better ICE and CBP coordination can improve the way these resources are allocated, but the total deterrence obtainable from their combined efforts is still limited by the funds available to buy bed space and support removal costs.⁵

Coordination of Investigative Operations

The current organizational structure has also hampered coordination of interdiction and investigation efforts. In the past, investigators belonged to the same organizations as inspectors and Border Patrol agents. Now, many CBP employees report that ICE no longer accepts as many case referrals from CBP inspectors and Border Patrol agents. Some attribute ICE investigators' declining acceptance rate of CBP case referrals to the separate chains of

⁴ The increase in the number of mandatory detainees, who consume approximately 87 percent of available detention bed space, has put a premium on coordinating the way the remaining available bed space is used. In effect, bed space has become scarce and tension over alternative uses is greater.

⁵ The OIG is currently conducting an audit of ICE's program for detaining and removing illegal aliens. Among other topics, the resulting audit report will address the impact of ICE's budget constraints on DRO's detention and removal mission.

command. In the past, when investigators did not respond to a referral, inspectors and Border Patrol agents had recourse to appeal for investigative support in important cases; this recourse is no longer easily available.

Additionally, many ICE investigators reported that investigative coordination between CBP and ICE is declining because CBP increasingly refers cases to other investigative agencies. In the past, USCS and INS investigators had first right of refusal for cases uncovered by inspectors. Due to ICE's less frequent acceptance of case referrals, interagency competition, growing mistrust, and an interest in receiving detailed feedback on case progress, CBP is referring more cases to the Federal Bureau of Investigation (FBI), Drug Enforcement Administration (DEA), and local law enforcement authorities for investigation without first notifying ICE.

CBP is now developing its own investigative capabilities. In October 2004, CBP announced a pilot program to increase the number of CBP enforcement officers – a group that, in the INS, investigated some immigration cases, but was restricted to the ports of entry (POEs). This pilot program would broaden the scope of these CBP enforcement officers' authority to include criminal violations of the federal customs and drug statutes, and expand their jurisdiction outside the POEs. Along the same lines, the Border Patrol has taken some steps to reconstitute its investigative capabilities in alien smuggling cases.

In addition to the referral of cases to outside law enforcement agencies, the development of an internal CBP investigative capability may adversely impact ICE investigations. ICE staff told us that some of its investigations have been compromised by CBP due to what it characterized as inexperienced CBP investigative work. Without a sound mechanism for deconflicting cases, duplicative investigations could ensue.

A large number of CBP employees and ICE investigators expressed concern about growing antagonism between the two organizations. They told us that they fear that, as legacy employees retire or resign, pre-DHS working relationships will lapse and coordination will further deteriorate.

Coordination of Intelligence Activities

Coordination of intelligence activities between CBP and ICE has also suffered. CBP and ICE intelligence requirements overlap to a large extent. Both CBP and ICE require intelligence regarding illegal aliens, criminal aliens, alien smuggling, drug trafficking, fraudulent travel documents, and import and export violations.

Despite their shared intelligence needs, the two organizations have separate intelligence structures and products. Intelligence coordination between CBP and ICE at both the headquarters and field levels needs improvement. At the headquarters level, the only significant intelligence coordination effort we could identify between the two organizations relates to intelligence received from outside agencies. Meanwhile, CBP has withdrawn from ICE field intelligence elements as ICE has from CBP's. Consequently, separate CBP and ICE field intelligence structures have emerged.

The organizations' primary means of sharing intelligence is the Treasury Enforcement Communications System (TECS), which was not designed for this purpose. Most CBP personnel lack the required level of access to retrieve critical information entered into TECS by ICE. As a result, valuable ICE information about criminal trends and threats is effectively withheld from most CBP employees, especially from those in the field. Furthermore, because the data system was not designed as an intelligence tool and does not highlight trends or detect anomalies, intelligence analysts often are unaware of the information it contains and must hunt through the entire system to retrieve information needed to "connect the dots."

As a result, CBP and ICE work independently of one another to develop intelligence products. CBP and ICE intelligence analysts told us that the two organizations have never co-authored any major intelligence products. The intelligence products each generates serve their respective needs and may not present a comprehensive picture of border security.

Improved efforts to eliminate intelligence stovepipes are needed. Intelligence and other information CBP and ICE could use to enhance their operations and improve overall border security is sometimes retained on the other side of the interagency wall. As a result, neither agency has all of the information it needs from the other. We were told that the failure of CBP and ICE to collaborate has led to at least a few cases in which CBP or ICE operations were hampered for an unnecessarily extended period because one did not know about important intelligence that the other had obtained.

Conclusions

It has been said that a merger or acquisition of the magnitude of DHS' establishment will take five years or more to settle into a satisfactory condition of operations. The programmatic issues reported here are evidence that integration is not proceeding as well as required. We encountered concerns that institutional rivalries, duplication of functions, and insularity of

view were tending in a negative direction. More broadly, we encountered bitter and vocal frustration from many DHS employees over basic questions, such as mission confusion, operational frustration at dependency on now remote bureaucracies for services and cooperation they once were able to take for granted, and a skepticism over whether DHS leadership was attentively engaged in finding answers for them.

The costs associated with another upheaval may not be as expensive as it might seem, largely because much of the physical integration has not been accomplished and therefore will not require funding to undo.⁶ Moreover, there is some good will and expertise within the two workforces that, though perishable, remains available to assist in this turn around. The greater cost will be in a loss of productivity and institutional and employee engagement during the hiatus until the dust again settles. A strong argument has been made to us that it is cheaper to retrench now than it would be later. There is validity in this contention. It is not simply a case of veterans wishing to return to the old way of doing things. We do not contemplate returning to separate USCS and INS operations; rather, we contemplate the union of USCS and INS functions, resulting in a stronger and more complete border security program.

The current organizational structure resulted in inefficiencies in the customs and immigration enforcement processes. These inefficiencies are apparent in breakdowns in: coordination between apprehension and detention and removal efforts, coordination between interdiction and investigative efforts, and coordination of intelligence activities.

Duplication has emerged in new areas, as redundant capabilities are being developed by CBP and ICE in response to deficiencies in resource sharing. And rather than improving, information and intelligence sharing has been undermined through the development of new stovepipes.

Three primary options for structural change have been raised. The first option is to eliminate BTS and have CBP and ICE report directly to the DHS Deputy Secretary. This option would not eliminate the emerging operational and informational stovepipes between CBP and ICE. Elevating the interagency coordination role to the Deputy Secretary would further remove the ultimate arbiter from the agencies' day-to-day operations.

⁶ We tried to ascertain the original cost of BTS' reorganization of the customs and immigration functions as a means of estimating possible costs to reverse it, but did not receive useful responses.

The second option for change involves strengthening mechanisms for coordination between CBP and ICE. This option would not require major changes to the current organizational framework but would necessitate the enlargement and strengthening of BTS to include clear budget formulation and execution authority over CBP and ICE, and increased staffing. We regard this second alternative as a less than optimal solution to the current challenges faced by CBP and ICE. Enlarging and further empowering BTS would likely add costs and remove budget powers from those responsible for operational management. Finally, these changes would maintain an institutional barrier between CBP and ICE and permit information and operational stovepipes to persist.

We suggest a third option – merging the two organizations. The resulting consolidated border security agency with a single chain-of-command would be better positioned to coordinate mission, priorities, and resources to guarantee a comprehensive border security program. We believe that this structural alternative would provide the best opportunity for strong, effective day-to-day coordination of interconnected operations and interdependent functions. If CBP and ICE are integrated and merged into one organization, the role of integrator, adjudicator, and enforcer would shift to the new agency head. Under this arrangement, BTS would become superfluous with respect to border enforcement and we recommend that it be disbanded.

Lastly, we make one final observation regarding CBP and ICE operations. When we met with CBP and ICE headquarters officials to discuss our observations from our extensive field work, we noted an apparent disconnect between headquarters' perceptions of what was occurring and what we observed. CBP and ICE officials noted that some of what we observed was in contravention to official policy. CBP and ICE headquarters officials provided us with numerous policy memoranda and other correspondence to demonstrate that what the field employees told us was happening was wrong. We suggest that part of the problem rests with the enormous challenge of creating and managing the new organizations. These discussions strongly suggest that communication and policy implementation need much improvement. Effective policy implementation requires constant monitoring by headquarters and that field managers be held accountable when those policies are violated.

DHS Second Stage Review

Our review effort identified a number of concerns in the relationship of CBP and ICE that we believe are linked to the current organizational structure. We concluded that the best means to address the issues described in our report

was to merge CBP and ICE. On July 13, 2005, the Secretary announced the results of his Second Stage Review (2SR) review. He decided not to merge ICE and CBP, but to place them in a direct reporting relationship to the Deputy Secretary. Other 2SR decisions – to eliminate BTS as an intervening directorate and return the Federal Air Marshal Service (FAMS) to the Transportation Security Administration (TSA) – are actions that are consistent with our views.

Our report has not been rendered moot by the Secretary's decision not to merge ICE and CBP. Rather, we encountered issues in the course of our review that require attention by DHS leadership whether or not there is a merger. We urge that each of these issues be considered carefully and addressed promptly. We conclude our report with a discussion of a number of recommendations for implementation within the 2SR framework. These recommendations are designed to help management overcome the interagency coordination and integration challenges confronting CBP and ICE.

Background

Overview

The Office of Inspector General was asked by the Chairman of the Senate Homeland Security and Governmental Affairs Committee to assess a proposal to merge CBP and ICE. A realignment of the various agencies and functions associated with border security has historically intrigued government managers. The most recent proposal, which generated the Chairman's request, proposed that CBP and ICE be merged and that its parent organization, BTS, be eliminated.

In our judgment, there are significant shortcomings in CBP's and ICE's ability to coordinate inspection, apprehension, detention, and investigative operations. These shortcomings are linked to the implementation of the current organizational structure. The current structure creates new stovepipes, which are inhibiting operational coordination and information sharing. Further, as both organizations seek to overcome the shortcomings of the current structure, they are building redundant capabilities to replace those they no longer control.

This report is based largely on testimonial evidence. CBP inspectors, CBP Border Patrol agents, ICE investigators, and DRO officers at all the locations that we visited expressed the view that the organizations' current structure is problematic. CBP and ICE field staff who we interviewed included senior managers. Both CBP and ICE field employees and both former INS and USCS employees communicated a high degree of frustration with the current structure. We observed antagonism between CBP and ICE that appears to be increasing and solidifying. Almost universally, the field employees perceive the current problems between CBP and ICE as unresolvable under the current structure because of the "unnatural separation" of the interdependent functions that were once part of the immigration and customs enforcement continuums. The intelligence collection and analysis activities of CBP and ICE are uncoordinated, making it difficult for the intelligence analysts to "connect the dots" to create a comprehensive threat assessment for border security.

Our findings are based on evidence we collected from over 300 interview sessions with over 600 individuals. Our interviews included BTS, CBP, and ICE frontline employees in the field, as well as senior leadership and program managers at headquarters in Washington, DC. We traveled to Buffalo, Chicago, El Paso, Miami, Newark, New York City, Phoenix, San Diego, San Francisco, and Tucson to observe air, land, and seaport border security

operations. We visited more than 63 different CBP and ICE sites in the field. We interviewed congressional staff; personnel from other federal agencies, including the Executive Office for the United States Attorneys and some United States Attorneys; knowledgeable individuals from the Brookings Institute, Council on Foreign Relations, Heritage Foundation, and the Rand Corporation; and union leadership – representing employees in CBP and ICE – from the American Federation of Government Employees, National Treasury Employees Union, and National Border Patrol Council. We reviewed standard operating procedures and other procedure manuals, budget plans, and, where available, performance statistics from the legacy INS and USCS organizations as well as similar information pertaining to BTS, CBP, and ICE.

While we found significant problems coordinating operations between CBP and ICE, we would be remiss if we did not acknowledge the tremendous accomplishments made by DHS since its inception. DHS was conceptualized in a little more than a year and was established just 60 days after its enabling statute became law. The standup of DHS represented the largest reorganization of government since the establishment of the Department of Defense following World War II. It combined 22 different agencies from the Federal Emergency Management Agency, Department of Agriculture, Department of Transportation, Department of Justice, Department of the Treasury, and elsewhere across the Executive branch.

These agencies brought their respective operational resources, skills, and missions together to secure the United States from terrorist attacks. Furthering the challenge for DHS was the requirement to orchestrate the blending of the multitude of differing policies, procedures, systems, and cultures of these agencies to form a single, cohesive DHS vision and mission. To that end, DHS has made significant progress since March 1, 2003. It should also be pointed out that all this work was accomplished while maintaining critical operations to protect the United States seven days a week, 24 hours a day. Further, DHS did not have the luxury of extensive time to plan and execute an administrative transition program, which may have resulted in a smoother and more effective transition process. DHS' efforts in this context have often been described as "learning how to fly an airplane while you are still building the airplane."

Much of the critical groundwork for establishing the new department has been laid for the future. However, DHS is still very much a work in progress. Indeed, the Secretary's 2SR initiative is an acknowledgment that the department still has much work to do to fully achieve its mission. The significant issues that we identified that relate to CBP and ICE will likely be

some of the most challenging for DHS to overcome. This is partly because these two agencies account for approximately 60,000 of DHS' 180,000 employees. Further, these two organizations are on the frontline of defense for the United States. Their collective success is essential. In addition, DHS faces additional management challenges with these two agencies because they are new organizations, rather than pre-existing organizations brought together under new management. They are comprised of pieces of two legacy organizations, INS and USCS, recast as CBP and ICE. It is not surprising, therefore, that many of DHS' most significant coordination and integration problems exist between CBP and ICE.

Organization of the Report

This report is organized into 11 sections. The first section contains the overview.

In the second section, *Establishment of Customs and Border Protection / Immigration and Customs Enforcement Structures*, we describe the formation of the current organization. We provide background on early considerations for structuring border security operations. We discuss the HSA as it pertains to structuring CBP, ICE, and BTS. We examine the structural recommendations made by transition teams formed to assist management with the establishment of DHS. We examine the establishment of CBP's and ICE's current structures. Finally, we introduce more recent discussions regarding the structures of CBP and ICE.

The third section, *Customs and Immigration Enforcement Continuums*, presents a framework for understanding interdependencies of the immigration and customs functions and how the current organizational structure has disrupted these relationships.

In the fourth section, *Coordination of Apprehension and Detention and Removal Operations*, we describe how the current organizational structure has created growing resource imbalances between the detention and apprehension functions, fostered the development of plans to direct traditional detention and removal resources toward interior enforcement, facilitated the development of detention practices that are not closely aligned with CBP border enforcement priorities, and impaired effective coordination.

In the fifth section, *Coordination of Investigative Operations*, we describe how the current organizational structure has led to a decline of coordination and information sharing between CBP and ICE that has reduced ICE's

responsiveness to CBP's investigative referrals. ICE's unresponsiveness, among other factors, has prompted CBP to refer more cases to other law enforcement agencies. We discuss the possibility that the current organizational structure has degraded the border enforcement mission. Further, because CBP's investigative needs are not being met, we discuss the emergence of new CBP investigative capabilities.

The sixth section, *Coordination of Intelligence Activities*, examines how the current organizational structure has separated CBP's and ICE's intelligence functions, creating problems coordinating intelligence activities, and reducing CBP's and ICE's ability to collaborate on intelligence reports. Also, we describe how overreliance on TECS to share information is inhibiting timely and effective intelligence exchange.

We discuss BTS' inability to overcome the management hurdles created by the current organizational structure in the seventh section, *Role of the Directorate of Border and Transportation Security*. We describe how BTS was inadequately resourced to perform its mission and that organizational roles and responsibilities were never clearly defined. We identify some of the consequences of BTS' coordination problems.

In the eighth section, we consider streamlining ICE, whether as a stand-alone component or after a merger with CBP. We examine three organizations within ICE (FPS, FAMS, and FDL) that should be realigned either within DHS or with some other department.

The ninth section discusses possible options for reorganizing DHS. We explore three organizational options to overcome the coordination issues between CBP and ICE.

In the tenth section, we discuss a number of substantive issues and make recommendations to address them through the Secretary's 2SR program to overcome the CBP and ICE's interagency coordination and integration challenges.

In the final section, we discuss DHS management's response and comments to our draft report.

Establishment of Customs and Border Protection / Immigration and Customs Enforcement Structures

Early Considerations for Structuring Border Security Operations

The enigma of how to structure the nation's border apparatus is not new. Past administrations have changed its structure and there have been many unimplemented proposals to reshape it, as well. The immigration function was established formally as the Office of the Superintendent of Immigration in the Department of the Treasury in 1891, transferred thereafter to the Departments of Commerce and Labor, then in 1940 to the DOJ, and now DHS. In 1924, the Border Patrol was added to the immigration agency. The customs function has been more stable, dating back to 1789 as part of the Department of the Treasury. For approximately 12 years, both the customs and immigration functions were co-located in the Department of the Treasury.

General Accounting Office Study

In 1993, Congress asked the General Accounting Office (GAO)⁷ to evaluate a possible merger of the inspections function of the USCS and INS at POEs. GAO reported, "Customs and INS have a long history of interagency rivalry coupled with ineffective cooperation and coordination pertaining to border crossing operations.... [T]hese unproductive conditions are deeply ingrained in the management cultures of these agencies."⁸

GAO recommended that:

On the basis of historical evidence as well as our current review of Customs' and INS' operations, we believe that the coordination problems at the land border crossings will not be resolved until the current dual management structure is ended Our panel of current and former officials experienced with customs and immigration issues reached consensus that a single independent agency that would combine the functions of Customs and INS presented the most viable option for preparing the government to meet the broader challenges posed

⁷ In 2004, the General Accounting Office was renamed the Government Accountability Office.

⁸ GAO, *Customs Service and INS: Dual Management Structure for Border Inspections Should Be Ended*, GAO GGD-93-111, June 30, 1993, pp. 1-2.

by changing international business competition and increasing international migration flows.⁹

The Jordan Commission

On September 30, 1997, the U.S. Commission on Immigration Reform issued a report to Congress, *Becoming an American: Immigration and Immigrant Policy*. Addressing structural reform, the Commission (often referred to as the Jordan Commission in memory of its first chair) stated:

The immigration system is one of the most complicated in the federal government bureaucracy. In some cases, one agency has multiple, and sometimes conflicting, operational responsibilities. In other cases, multiple agencies have responsibility for elements of the same functions. Both situations create problems.¹⁰

The Jordan Commission recommended creating a Bureau for Immigration Enforcement for border and interior enforcement within the Department of Justice. Under this realignment scheme, most immigration benefit determinations were to be transferred to the Department of State, while other responsibilities were to be transferred to the Department of Labor. INS inspectors, Border Patrol agents, and detention officers were to be combined into one unit within the new Bureau for Immigration Enforcement, the Immigration Uniformed Service Branch. In addition, to integrate the apprehension and removal functions, the Bureau for Immigration Enforcement was to include investigators and deportation officers in another unit.

The Gilmore Commission

The Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction (Gilmore Commission) in its third annual report published December 15, 2001, did not make recommendations about the structure of the border security elements within DHS. However, the Gilmore Commission identified the need, at the operational level, for all agencies to act collectively and share critical information including intelligence on all aspects of immigration and border control. Further, it recommended the creation of an interactive and fully integrated “Border

⁹ Ibid., p. 2.

¹⁰ U.S. Commission on Immigration Reform, *Becoming an American: Immigration and Immigrant Policy*, September 30, 1997, p. 148.

Security Awareness” database to collect and disseminate information about all border security matters.

The Homeland Security Act of 2002

On November 25, 2002, President George W. Bush signed into law the *Homeland Security Act of 2002*. The HSA established BTS, which included two bureaus – the Customs Service and the Bureau of Border Security. The Customs Service was to include the legacy USCS organization except for some revenue collection functions that would remain at the Department of the Treasury.

The second element in BTS was the Bureau of Border Security. The HSA transferred to the Under Secretary for BTS the programs and personnel of the Border Patrol, and INS’ detention and removal, intelligence, investigations, and inspections programs. The Assistant Secretary of the Bureau was authorized to establish policy relating to Bureau of Border Security and administer its implementation.

In addition, the HSA added the Department of Agriculture’s (USDA) animal and plant import and entry inspection function to BTS, along with TSA, FPS, FLETC (Federal Law Enforcement Training Center), and the Office for Domestic Preparedness (ODP).¹¹ Significantly, HSA also ended the long-debated separation of INS’ service and enforcement functions through the establishment of an independent Citizenship and Immigration Services (CIS) agency within DHS to provide immigration benefits.¹²

On November 25, 2002, almost immediately after the HSA was enacted, the President transmitted his "Department of Homeland Security Reorganization Plan," to Congress. With respect to the organization of border security functions and entities, the plan mirrored the HSA. However, the plan also stated that it was subject to later modification.¹³

¹¹ ODP was transferred out of BTS and has since become part of the DHS Office of State and Local Government Coordination and Preparedness.

¹² The challenges of establishing BTS, and its subordinate components, are viewed as merger issues. Less appreciated were the separation issues associated with spinning INS services off, which because of the many interdependencies existent in the legacy INS, also proved to be great challenges.

¹³ The HSA gave the Executive Branch latitude to reorganize the new department. Section 1502 allows the President to modify his reorganization plan. Section 872 provides that the Secretary may “relocate functions among the officers of the Department, and may establish, coordinate, alter, or discontinue organizational units within the Department,” after providing 60 days notice to Congress.

On January 30, 2003, the current BTS organization was announced. This was the first public announcement of the current DHS border security structure and the departure from the original statutory plan. Under the modified organizational structure, USCS and INS inspections and Border Patrol operations were consolidated within CBP as One Face at the Border, while the interior enforcement functions of USCS and INS investigators along with the detention and removal functions of INS were shifted to ICE. There would be no Bureau of Border Security or Customs Service designated in the new structure. On February 4, 2003, the President transmitted his Reorganization Plan Modification for the Department of Homeland Security to Congress.

Structural Recommendations Made by Transition Teams

Several transition teams were established at times during the formation of DHS. The first transition team was established shortly after the President announced his support for the formation of DHS in June 2002 and was managed by Office of Management and Budget (OMB) and the White House Office of Homeland Security.¹⁴ Another transition team was established in December 2002 after the nominations of Tom Ridge as Secretary of DHS and Asa Hutchinson as Under Secretary of BTS. Senior managers and experts from INS, USCS, TSA, USDA, and United States Coast Guard (USCG) staffed the transition teams.

Rationale for Customs and Border Protection Structure

The decision to merge the immigration and customs inspections functions into a single organization to create “One Face at the Border” may have been made early in the transition process, as early as the summer of 2002. There was very little discussion and even less dissension, on this structural proposal. To have customs, immigration, and agriculture inspectors at POEs operating under a single chain of command was an effort to integrate the seemingly common functions divided at the time among three departments. The Border Patrol was added somewhat later in the process.

Rationale for Immigration and Customs Enforcement Structure

Separation of Inspection from Investigation Functions

The rationale for the decision to create ICE by separating the inspection function from the investigation function was much more difficult to discern.

¹⁴ We sought but were unable to obtain interviews with several of the most senior participants in the planning effort.

Most CBP and ICE officials told us that they are still puzzled over the decision-making concerning ICE's structure. According to them, to this day, no one has been able to articulate the rationale for the current structure. All of the members of the transition team associated with border security advocated keeping the investigative and inspection functions unified. Samples of reoccurring themes from the transition team's position papers concerning this subject include:

"...splitting them [investigators from inspectors] would be unwise and not recommended."

"Removal of [investigators] to a separate agency would interfere with the close working relationship and 'feedback loop' of information between inspectors and [investigators]...."

"...create new stovepipes between newly created border enforcement agencies where none currently exist."

"...such a split would fragment responsibility and accountability for border enforcement...."

"[The establishment of a separate investigative organization] ... would require the creation of a separate support bureaucracy...."

"Information concerning both areas [inspections and investigations] should not have to travel circuitous routes to arrive at the level of implementation."

"...risks disrupting the model for immigration enforcement."

"The best way to ensure a strong relationship between inspectors and investigators is by leaving both within the single border agency, under the management of a single agency head."

A team formed by the Commissioner, USCS, produced a white paper, *Creating a Single Border Agency Under the Homeland Security Act of 2002*, in December 2002. The white paper proposed merging USCS, the enforcement functions of INS, and USDA border inspections functions into a single border security agency. The white paper envisioned that a single border security agency would "break down the stovepipes, inefficiencies, and interagency dysfunctions that currently exist with regard to border security and enforcement" and "ensure the critical flow of information and coordination of operations." The white paper called for a single chain of

command to align missions, priorities, and resources within the new agency to ensure mission accomplishment. The paper suggested that the proposed agency would have allowed investigators to work “seamlessly with inspectors and Border Patrol agents.” According to the white paper, moving USCS and INS investigators to an agency separate from inspections and the Border Patrol would fragment responsibility and accountability for border enforcement and would create new stovepipes between the new agencies.

Determining the Composition of Immigration and Customs Enforcement

Once the decision to create an investigative organization was made, other decisions followed that shaped the final composition of ICE. We could not find any documentation that fully explains the rationale and purpose underlying ICE’s composition. One senior official offered the following explanation described below. According to this portrayal, ICE was established not with a focus on supporting a particular mission but rather on building an institutional foundation large enough to justify a new organization.

The official said that while the decision to merge the inspections functions and the Border Patrol into a single organization was made early, the question of what to do with the remaining elements of the former INS was more problematic. Early in the planning, there was discussion of forming an interior immigration enforcement organization. While many immigration and customs professionals rankle at the notion that there is a distinct interior enforcement mission, the proposal contemplated an organization that would consist of some DRO elements to locate and remove illegal aliens in the interior and immigration investigators to pursue employer sanctions and immigration fraud cases.

However, he continued, the trouble with this proposal was that this organization would be too small to attain bureaucratic “critical mass.” That is, the relative degree of support required to maintain this organization would be expensive and disproportional to the size of the operational element of the organization. The organization needed to be larger.

The “sizing up” process focused on creating an organization composed of the General Schedule (GS) -1811 criminal investigator job series and some other activities. All DRO resources were added to this interior enforcement organization. Next came the addition of all immigration investigators. Finally, the customs investigators were added. Also included in this new organization were the attorneys that comprise the Office of Principal Legal Advisor (OPLA) and the FDL.

Since the entire GS-1811 job series was being moved to ICE, USCS' Office of Professional Responsibility (OPR), which is composed of GS-1811s, moved to ICE. USCS' Air and Marine Operations (AMO) and the Office of Intelligence, which were organized under USCS' Office of Investigations for administrative purposes, moved to ICE with the Office of Investigations (OI).¹⁵ The USCS AMO and Office of Intelligence had provided assistance to both inspectors and investigators in the past. The decision to place the two entities in ICE appears to have hinged on their former organizational position within OI at USCS.

Finally, FPS and FAMS, two organizations from outside of the former INS and USCS, were added to round out ICE's structure.¹⁶ There was now the necessary critical mass to justify a separate law enforcement agency within BTS.

Opposition to a Single Border Security Agency

Some planners involved in the transition process said that they were concerned that a single organization would be too large. Combining the designated entities from USCS, INS, and the USDA's Animal and Plant Health Inspection Service (APHIS) would result in a total workforce of 46,885 full-time equivalents (FTEs), 5,624 of whom would be investigators. We were told that the thinking at the time was that a single organization would be too unwieldy; its span of control too large. Coupled with INS' historic management deficiencies, a single agency might have been doomed to failure. Breaking these challenges into more manageable sizes seemed like a better solution. We also heard rumors that other agencies within the government opposed a single border security agency because they feared that it would become a dominant player in the law enforcement community because of its size and massive resources.

Announcement of Customs and Border Protection / Immigration and Customs Enforcement Structures

¹⁵ While AMO has a law enforcement support mission, AMO's primary mission is border interdiction, which aligns very well with CBP's border interdiction mission. On November 2, 2004, the BTS Under Secretary "corrected" the initial misalignment of AMO with ICE and transferred the organization to CBP.

¹⁶ FAMS was initially was part of TSA. On November 25, 2003, the DHS Secretary transferred FAMS to ICE to "establish an integrated law enforcement presence in the aviation sector." (Remarks of the Assistant Secretary for ICE, November 2003).

According to senior CBP and ICE officials and members of the transition teams, the final decision on BTS' structure and composition came as a surprise. While some may have had an inkling of the direction that the planning was headed, we were told that senior ICE and CBP officials learned of the final decision about BTS' structure while on travel to a DHS management meeting on January 29, 2003. Most of the rank and file CBP and ICE employees learned of the decision through a press release issued on January 30, 2003.

Recent Discussions Concerning Customs and Border Protection / Immigration and Customs Enforcement Organizational Structures

Heritage Foundation and the Center for Strategic and International Studies Report

In December 2004, the Heritage Foundation and the Center for Strategic and International Studies released the report, *DHS 2.0: Rethinking the Department of Homeland Security*. One of the report's conclusions was that DHS' structure had complicated accountability for the border security mission because it failed to clearly delineate the mission of DHS' components. The report said that it could find no compelling reason for splitting the customs and immigration enforcement functions between two agencies - CBP and ICE. There was scant discussion and the report was silent on any evidence of mission degradation. The report recommended:

Rationalize border security and immigration enforcement by merging the CBP and ICE.... BTS has neither the staff nor the infrastructure to integrate the operations of the CBP and ICE.... Merging the CBP and ICE will bring together under one roof all of the tools of effective border and immigration enforcement – Inspectors, Border Patrol Agents, Special Agents, Detention and Removal Officers, and Intelligence Analysts – and realize the objective of creating a single border and immigration enforcement agency.¹⁷

The report further recommended:

¹⁷ Heritage Foundation and CSIS, *DHS 2.0: Rethinking the Department of Homeland Security*, December 13, 2004, pp. 15-16.

Eliminate the BTS. With the merger of CBP and ICE into a single agency, there is no need for the BTS middle-management layer.¹⁸

Homeland Security and Governmental Affairs Committee Hearing

On January 26, 2005, the Homeland Security and Governmental Affairs Committee held a hearing, “The Department of Homeland Security: The Road Ahead.” In her opening remarks, the Committee Chairman acknowledged the Heritage Foundation’s report and recommendations. During the testimony of the DHS Inspector General (IG), she asked him for his opinion regarding the proposed merging of CBP and ICE. The IG responded that the OIG had not studied this issue and had no opinion. She subsequently asked the IG to conduct a study to assess the proposal to merge CBP and ICE.¹⁹

Customs and Immigration Enforcement Continuums

This section introduces the customs and immigration enforcement continuums. The continuums provide a framework for understanding the interconnectedness and interdependencies of the immigration and customs functions and how the current organizational structure has disrupted the relationships between these functions. In subsequent sections of the report, we will discuss the impact of the disruptions created by the current organizational structure.

The Continuums with Immigration and Naturalization Service / United States Customs Service

Prior to DHS, USCS managed the customs enforcement continuum – ensuring the legitimate flow of goods and materials entering the country. INS managed the immigration enforcement continuum – ensuring the legitimate flow of foreign visitors and immigrants entering the country. The continuums constituted a system of interconnected and interdependent functions constructed to interdict, apprehend, and prosecute customs and immigration law violators. The USCS and INS organizational structures were based on

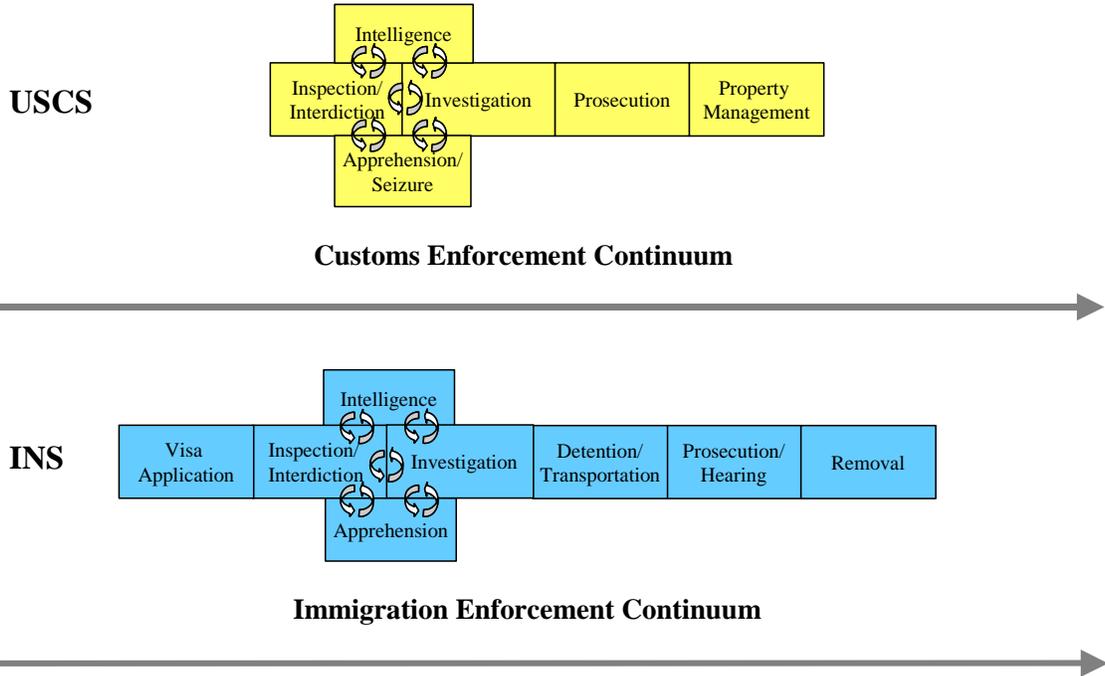
¹⁸ Ibid., p. 16.

¹⁹ On April 6, 2005, Senator F. James Sensenbrenner, Jr., chairman of the House Committee on the Judiciary wrote to the OIG to ask that we examine the possibility of removing immigration enforcement functions from CBP and ICE and organizing them into a separate agency.

these functions.²⁰ Apprehensions, inspections, investigations, detention, prosecutions, and removals were just some of those functions. To illustrate, we have divided the continuums into their key functions.

²⁰ See Appendix A, Organizational Overview of the Immigration and Naturalization Service, and Appendix B, Organizational Overview of the United States Customs Service.

Customs and Immigration Enforcement Continuums

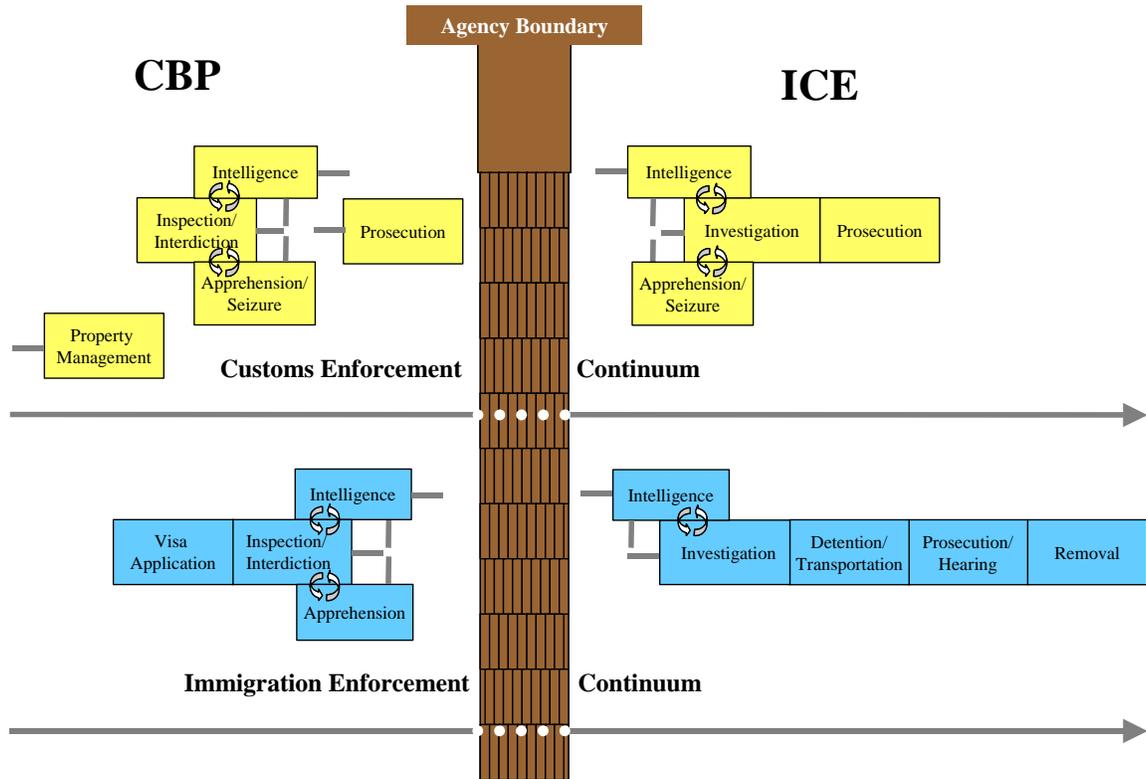


The Continuums with Customs and Border Protection / Immigration and Customs Enforcement

The new DHS organizational structure imposed nearly insurmountable management challenges for CBP, ICE, and BTS. The long-standing customs and immigration enforcement continuums were broken. The organizational structure had the unintended consequence of creating an institutional barrier between what once were interconnected and interdependent functions by placing some of the functions within CBP and others within ICE.²¹ The institutional barrier created significant coordination and communication problems between CBP and ICE that affect operations and information sharing.

²¹ See Appendix D, Organizational Overview of Customs and Border Protection and Appendix E, Organizational Overview of Immigration and Customs Enforcement.

Customs and Immigration Enforcement Continuums Interrupted



In order to maintain operational efficiency and effectiveness within the customs and immigration enforcement continuums, it was vital for CBP and ICE to coordinate operations and share information.²² Unfortunately, CBP and ICE did not always coordinate operations or share information. BTS leadership was assigned the responsibility to integrate CBP and ICE functions. However, BTS was hindered by a lack of staff resources to monitor CBP and ICE operations and the necessary authorities to enforce accountability. BTS was not always successful in ensuring coordination between CBP and ICE.

During the course of our review, we were mindful of the budget problems that ICE has experienced since its formation. Almost all of the ICE managers and employees with whom we spoke said that they were frustrated with the problems caused by inadequate and uncertain funding, and the apparent inability to resolve the issues. ICE's funding difficulties, however, do not

²² See Appendix F, Operational Scenarios Illustrating the Interconnectedness of Customs and Border Protection and Immigration and Customs Enforcement.

account for all of the problems facing CBP and ICE. Our report focuses on the issues that are related to the current organizational structure.

While it is too early to determine with any certainty whether the current organizational structure has, by itself, contributed to a degradation of mission, the issues we describe in our report are significant and will require leadership intervention to resolve. Now is the time to make needed changes, before current practices become entrenched in the bureaucracy and, more importantly, before there is significant degradation in DHS' ability to accomplish its border security mission.

In the following sections we discuss the issues and significant management challenges faced by CBP, ICE, and BTS. Specifically, we describe the lack of coordination between ICE's detention operations and CBP's apprehension operations. We also discuss the problems created with the separation of the inspection and interdiction function from the investigation function and how that action has led to a lack of coordination and cooperation between CBP and ICE. We discuss significant problems with coordinating intelligence activities, including collaboration to produce intelligence reports between CBP and ICE. Finally, we describe BTS' difficulties coordinating CBP and ICE operations.

Coordination of Apprehension and Detention and Removal Operations

The interdependency of CBP and ICE within the immigration enforcement continuum is apparent in the apprehension and detention arena. The interconnectedness of CBP's apprehension efforts and ICE's detention and removal activities demands intensive coordination. Under the current organizational arrangement, coordination has suffered at both the national and field levels.

In this section we discuss the operational environment in which ICE performs its detention and removal functions and CBP performs its alien arrest and apprehension function. We identify problems with the coordination of the two functions at the national and field levels. We describe how the current organizational structure contributed to growing resource imbalances between the two functions, fostered the development of plans to direct traditional detention and removal resources toward interior enforcement, and facilitated the development of detention practices that are not closely aligned with CBP border enforcement priorities. We also discuss how the current organizational structure has inhibited effective coordination, and claims that the current

structure has led to a reduction in DRO functional support of CBP. Finally, we discuss the consequences of the lapses in coordination of apprehension, and detention and removal resources and operations.

Operational Environment

CBP components are responsible for the vast majority of arrests and apprehensions for immigration violations, while ICE's DRO is responsible for the detention and removal of those apprehended. DRO's workload is determined to a great extent by the volume and character of CBP's apprehension efforts, and the effectiveness of CBP's apprehension efforts is, in turn, dependent in large measure on DRO's downstream detention and removal of those CBP apprehends.

Aliens entering the United States illegally may be arrested by one of two CBP organizations.²³ CBP inspectors arrest aliens attempting to illegally enter the United States at POEs. CBP Border Patrol agents apprehend aliens attempting to illegally enter the United States between the POEs. Most illegal aliens agree to a voluntary departure²⁴ from the United States or withdraw their entry applications²⁵ and immediately return to their country of origin. However, a large number remain in the United States pending return travel arrangements, a removal order, or an immigration hearing.²⁶ Aliens in this category may be paroled²⁷ into the United States, released on their own recognizance, released on bond, or detained. Whether released or detained, many aliens remaining in the United States pending an immigration action become the responsibility of DRO.²⁸

²³ Two organizations in ICE, OI and DRO, also apprehend aliens who are in the United States illegally.

²⁴ In many cases, apprehended aliens are given the opportunity to voluntarily depart from the United States under supervision. Before being escorted to a point of departure, aliens voluntarily departing the United States must agree that their entry was illegal and waive their right to an immigration hearing. Aliens who consent to a voluntary departure are permitted to apply for legal entry to the United States in the future.

²⁵ CBP inspectors permit some aliens who illegally attempt to enter the United States through a POE to withdraw their application for admission and return to their point of origin. Like the voluntarily departure process, the withdrawal of an entry application does not result in any future restrictions on legal entry to the United States.

²⁶ As described earlier, under some circumstances, aliens apprehended in the process of attempting an illegal entry into the United States may elect to voluntarily depart or withdraw their application for entry. Aliens who are not offered these options or who request a hearing on their immigration status are placed in removal proceedings. With some exceptions, these removal proceedings require a hearing before an immigration judge in the DOJ's Executive Office of Immigration Review (EOIR). When, after reviewing the case, an immigration judge issues an order of removal, DRO assumes responsibility for taking the alien into custody and removing him from the country.

²⁷ CBP inspectors at POEs have the authority to parole aliens into the United States pending future immigration action. This parole status is granted under terms and conditions set by CBP.

²⁸ As of September 30, 2004, 496,983 aliens were in the United States pending an immigration action.

DRO assumes responsibility for aliens pending an immigration action in three ways. First, in virtually all cases, DRO is responsible for the custodial management of aliens held in a detention setting.²⁹ Second, DRO is responsible for apprehending aliens released into the community on bond or on their own recognizance who have been issued removal orders but fail to comply with them, as well as those who fail to appear for their removal hearing. Third, DRO is responsible for effecting the removal of aliens who are issued final orders of removal – a process that sometimes involves escorting aliens back to their countries of origin.³⁰

In this context, CBP inspectors and Border Patrol agents can be considered front-end contributors to the immigration enforcement continuum. And, for its part, DRO can be regarded as the downstream component of the same immigration enforcement continuum. The maximum efficiency and effectiveness of these parts of the immigration enforcement continuum can only be achieved through close coordination at the national and field levels.³¹

Problems with National Coordination

The separation of CBP's apprehension components from DRO has created challenges in national coordination. Because they are part of two different agencies pursuing different sets of priorities, they pursue discrete strategic planning processes. CBP and DRO formulated budgets independently, without communication or coordination regarding mission or priorities. DRO prepared detention bed space and staff needs projections without the benefit of CBP apprehension and arrest projections; CBP developed its future apprehension initiatives without the benefit of insight into DRO's future capability for downstream processing.³²

²⁹ Due to the limitations of its Deportable Alien Control System (DACS), DRO is unable to determine definitively what proportion of its detainees were apprehended by CBP. DRO is currently pursuing a system development effort to replace DACS with an automated data collection and analysis system with greater analytical capabilities.

³⁰ See Appendix F for more detail on the apprehension, detention and removal process.

³¹ Ultimately, DRO's detention and removal functions are governed by appropriations. Better ICE and CBP coordination can improve the way these resources are allocated but the total deterrence obtainable from their combined efforts is still limited by the funds available to buy bed space and support removal costs.

³² DRO recognized the need for greater coordination in this area in 2003. In its Strategic Plan, DRO noted that DHS, "does not yet have, in place, a tool, method or process to ensure that strategies, budgets and operations planned for and executed by other enforcement programs consider the impact to DRO and the ensuing operational implications and resource requirements." (DRO, *Endgame: Office of Detention and Removal Strategic Plan, 2003-2012*, p. 2-6, June 27, 2003.)

The shortfall in national coordination between CBP and DRO has adversely affected operations in two important ways. First, it has contributed to imbalances between CBP's front-end apprehension capabilities and DRO's downstream detention and removal capacity. Second, it has facilitated ICE's plans to focus an increasing share of DRO resources on interior enforcement activities – a process that, if it is not carefully managed, may undermine traditional detention and removal operations that support CBP.

Growing Resource Imbalances

Currently, management of detention and removal operations is separate from management of most apprehension efforts.³³ Coupled with ICE's recent funding and accounting difficulties, the resulting lack of coordination at the national level has fostered a growing imbalance between ICE's detention and CBP's apprehension capabilities.

CBP has expanded its apprehension capabilities significantly over the last two and a half years.³⁴ Its expanded capabilities have, in turn, contributed to a rise in apprehensions. Total Border Patrol apprehensions climbed 25 percent to 1.16 million between FY 2003 and FY 2004. Meanwhile, the Border Patrol's apprehensions of other than Mexicans (OTMs), who remain in the United States pending an immigration action more frequently than do Mexican nationals and therefore more often become the responsibility of DRO, have risen even more substantially. In FY 2003, the Border Patrol apprehended 49,545 OTMs, whereas in FY 2004 it apprehended 75,389 OTMs, a 52 percent increase.³⁵ Strikingly, FY 2005 Border Patrol apprehensions of OTMs through April were 127 percent higher than for the same period in FY 2004.

While CBP apprehension capabilities climbed, DRO's detention and removal capacity did not. In the midst of rising apprehensions and referrals, DRO was subject to a hiring freeze starting in March 2004. Due to workforce attrition, DRO lost two percent of its overall workforce since the hiring freeze took

³³ In the past, leadership at INS headquarters oversaw the Border Patrol, inspectors, and detention and removal operations for the entire nation. This organizational arrangement provided INS leadership with the opportunity to coordinate detention and removal efforts with apprehension operations. INS leadership, nonetheless, sometimes failed to plan for increases in downstream resources to manage the increased volume of detention, processing, and removal requirements associated with planned apprehension resource expansions. According to some former INS managers, even when INS leadership attempted to balance front-end and downstream resources in its planning and budgeting efforts, detention and removal resources were often diverted to support inspectors and the Border Patrol by regional and district-level INS managers. This resulted in an imbalance of front-end and downstream immigration enforcement resources.

³⁴ In FY 2004, CBP increased the number of CBP officers and Border Patrol agents by over 300, and a supplemental appropriation for FY 2005 (Pub. Law No. 109-13) provides funding for an additional 500 Border Patrol agents.

³⁵ OTMs are apprehended by ICE OI and DRO, as well as CBP. In FY 2004, a total of 145,367 OTMs were apprehended by ICE and CBP combined.

effect.³⁶ Further complicating matters, over the fiscal 2002 to 2004 interval, funding for detention beds remained constant, but DRO's average daily population of detainees grew. More stringent enforcement of caps on bed space utilization brought DRO's average daily population down from 21,898 in FY 2004 to 19,644 in March 2005, a ten percent decrease. Dedicated funds in the May 2005 emergency supplemental appropriation will help DRO make up some of the lost ground by funding detention space for a daily average of 1,950 additional detainees.³⁷

This imbalance has implications at the local and national levels. The local level impact is apparent in DRO's support of the Arizona Border Control Initiative (ABCI). ABCI is a BTS-wide initiative to stem the tide of aliens and contraband flowing across the Arizona border with Mexico. Before it was inaugurated in the spring of 2004, planning efforts for ABCI identified a need for 100 additional DRO officers in Arizona. Due to DRO's nationwide staffing limitations, however, no additional DRO officers were hired to support ABCI, and only 13 DRO officers were detailed to Arizona from other parts of the country. This variance between staff support needs and actual staff allocation limited DRO's ability to support fully ABCI apprehension efforts.

At the national level, DRO detention space limitations have resulted in the release of increased numbers of apprehended aliens into the community. About 39 percent of aliens who are released into the community with an order to appear do not appear for their removal hearings. Overall, about 85 percent of non-detained aliens with removal orders abscond. The immigration system absconder backlog stood at 465,353 at the end of FY 2004 and continues to grow.

Increased Focus on Interior Enforcement Has Potential to Displace DRO Support for CBP

Despite indications that enhancements to CBP's front-end apprehension efforts are at the point of outstripping DRO's downstream detention and removal capabilities, ICE has plans to direct an increasing share of DRO resources to locating deportable aliens in the nation's interior. This shift in DRO's focus was described by its June 2003 Strategic Plan, which envisioned a greater future interior enforcement role for DRO.³⁸ Current plans call for an

³⁶ DRO's workforce declined from 3,736 on March 20, 2004 to 3,655 on April 2, 2005.

³⁷ Pub. Law No. 109-13.

³⁸ Plans for DRO to focus its resources to a greater extent on interior enforcement also were discussed prior to the formation of ICE and CBP. DRO, *Endgame: Office of Detention and Removal Strategic Plan, 2003-2012*, June 27, 2003. p. 4-4.

increase DRO's "fugitive operations" in search of alien absconders and transfer control of the Criminal Alien Program (CAP) from ICE's Office of Investigations to DRO.³⁹ The CAP program is directed at identifying criminal aliens under federal, state, and local supervision and ensuring that these aliens are taken into ICE custody for deportation upon completing their sentences. To support this new role, DRO reclassified and retrained a substantial portion of its workforce to perform more complex alien processing and interior enforcement functions, such as absconder apprehensions.⁴⁰

Increased emphasis on interior enforcement is an important initiative. If it is not carefully managed and closely monitored, however, this increased emphasis may adversely affect CBP's border enforcement efforts. Without appropriate steps to ensure that the traditional detention and removal efforts of reclassified staff continue to be performed, the reorientation of these employees away from traditional detention and removal efforts will result in the attenuation of aliens' processing and removal times. If, as a result, DRO is unable to sustain its current throughput, it will not be able to maintain processing and removal capacity for the volume of aliens apprehended by CBP.

Without effective budgeting to support the downstream processing, detention, and removal of those apprehended in DRO's interior enforcement efforts, DRO's expanded interior enforcement role will place additional strain on its detention and removal resources. Just like aliens apprehended by CBP, aliens arrested by DRO during the course of its interior enforcement activities will require downstream processing, detention, and removal efforts. In this regard, they will be competing for resources with aliens apprehended by CBP. Moreover, because aliens apprehended through CAP have criminal records, their detention and removal are likely to be prioritized ahead of aliens apprehended by CBP, who typically do not have criminal records. As a result, DRO's expanded work in CAP may erode the likelihood that aliens apprehended by CBP will be detained or removed.

Problems with Field Coordination

³⁹ Plans for the CAP program call for it to bring together elements of three pre-existing programs managed by ICE – the Alien Criminal Apprehension Program (ACAP), the Institutional Hearing Program (IHP), and the Institutional Removal Program (IRP). (Testimony of Victor Cerda, Acting DRO Director, before the Subcommittee on Immigration, Border Security and Citizenship of the Senate Committee on the Judiciary, April 14, 2005.)

⁴⁰ DRO, *Endgame: Office of Detention and Removal Strategic Plan, 2003-2012*, June 27, 2003, pp. 2-8 & 4-5.

In the INS, field-level coordination between apprehension efforts and detention and removal activities occurred at the district, regional, and headquarters levels. INS headquarters leadership oversaw all Border Patrol, inspection, and detention and removal operations. Regional Directors provided the first layer of oversight of all three components, providing management over both INS district and Border Patrol sector activities. At the local level, INS District Directors combined authorities over inspection and detention operations and provided operational coordination between the two.

With the abolition of INS, consolidated oversight of CBP apprehension efforts and detention and removal activities first occurs at the BTS directorate level. Within DHS, DRO's field management structure is no longer consolidated with that of CBP's field offices. DRO field units now report directly to DRO headquarters. Its leadership in Washington, DC, in turn, reports to the Assistant Secretary for ICE. CBP inspectors and Border Patrol agents report through a separate chain of command to the CBP Commissioner. While coordination within INS was not always ideal, the separation of CBP's apprehending components from ICE's DRO creates an opening for more difficulties in this area.

At the agency level, CBP and DRO communicate through a few interagency liaison staff and convene joint working groups.⁴¹ There are, however, few formal, permanent mechanisms for direct operational coordination between CBP's apprehending components and DRO. Senior managers from CBP and DRO reported that they did not know of any formal, permanent operational coordination mechanism between CBP and DRO at the national level. Nor are there any nationwide requirements that CBP apprehending components coordinate their efforts with DRO at the local level. Under the current organizational structure, CBP Border Patrol sectors and OFO field offices are under no obligation to collaborate, coordinate, or advise DRO of their apprehension initiatives and requirements for DRO resources. Similarly, DRO field offices are not required to notify Border Patrol or OFO of ICE apprehension and removal efforts that are likely to impact the availability of detention space and removal resources. Productive operational coordination between DRO and CBP occurs in several localities,⁴² but the conditions giving rise to this coordination are often local in nature. A number of officials in

⁴¹ CBP and DRO staff have participated in several working groups. Some of these working groups, such as the U.S.-Mexico Repatriation Technical Working Group and Expedited Removal Working Group, are broad-based, multi-agency efforts. Others, such as the working group on Border Patrol's use of expedited removal, represent efforts to address more narrowly defined issues confronting the two organizations.

⁴² Several notable cooperative efforts between DRO and CBP have arisen in Arizona where CBP's local Chief Patrol Agent is the designated lead Integrator for ABCI, and DRO's Field Office Director serves as the Deputy Integrator for the initiative.

both CBP and DRO noted that the quality and extent of coordination between CBP and DRO currently depends on the level of good will the people in one organization feel toward the other.

The lack of full operational coordination across agency lines has undercut overall immigration enforcement in three significant areas. First, DRO's detention practices are not aligned with CBP's border enforcement priorities as closely as in the past. Second, when operational coordination between CBP and DRO has occurred, its effectiveness has been hampered by institutional barriers. Finally, CBP has had difficulty ensuring adequate performance in areas where in the past it depended on DRO. As a consequence, CBP has been required to divert employees from core inspection and patrol work to duties previously conducted by DRO.

Detention Practices Not Always Aligned with Border Enforcement Priorities

Effective border enforcement depends on the removal of aliens apprehended in the process of unlawfully entering the United States. Without the prospect of removal, the deterrent effect of an initial apprehension is significantly weakened. The likelihood of removal, in turn, is influenced to a large extent by the detention status of an illegal entrant. Only about 18 percent of all aliens who are released into the community and subsequently receive removal orders are ultimately removed from the United States. In sharp contrast to the low removal rate for aliens released into the community, individuals who are held by DRO at the time of their removal order are removed from the country 97 percent of the time. Consequently, arresting agencies have a compelling interest in ensuring that apprehended immigration violators are detained pending their immigration proceedings.

Because funding for detention space is limited, only a fraction of illegal entrants pending an immigration action may be detained. In light of the impact detention status has on the likelihood of removal from the United States, decisions on which aliens to detain also bear on the broader success of border enforcement efforts. At some level, then, if border enforcement efforts are to be successful, detention practices must reflect border enforcement priorities. Under the current organizational structure, however, DRO is only accountable for CBP's border enforcement priorities through its interpretation of BTS guidance on detention priorities.

For detention purposes, there are two primary classes of aliens – “mandatory” and “non-mandatory” detainees. By law, mandatory detainees must be

detained.⁴³ The detention of non-mandatory detainees, on the other hand, is discretionary. Under the INS, the allocation of detention beds to non-mandatory detainees occurred at the discretion of regional directors, Border Patrol Chief Patrol Agents (CPA), and District Directors with responsibility for immigration processing at POEs and detention and removal operations. INS regional directors were required to ensure that basic detention support was provided to the full spectrum of INS enforcement objectives, including those of the Border Patrol and POE inspectors.⁴⁴

Now, however, sole discretion over the detention of non-mandatory detainees rests with DRO.⁴⁵ In addition to the authority to deviate from BTS guidelines on detainee prioritization, DRO is now assigned the responsibility of determining whether particular cases meet the standards for “high,” “medium,” or “low” detention priority set out in these guidelines. The authority to make determinations as to whether an individual meets criteria for a given detention priority category is important because some of the categories of alien described in BTS’ guidelines are subject to varied interpretation.⁴⁶

In practice, these changes have implications for immigration enforcement. Under the INS, apprehending components were able to pursue apprehension efforts with the knowledge that aliens apprehended during the course of those efforts would be accorded the detention priority that the apprehending entity thought appropriate. This direct input into the downstream processing of apprehended aliens provided immigration inspectors and the Border Patrol with greater operational flexibility and facilitated planning.

⁴³ Such mandatory detainees currently include: aliens who are suspected terrorists; aliens who have engaged in or are likely to engage in terrorist activity; aliens who have incited terrorist activity; criminal aliens who have committed offenses involving moral turpitude, controlled substances, or firearms; aliens who have expressed the intent to cause death or serious bodily harm; and aliens in expedited removal proceedings, with limited exceptions.

⁴⁴ Memorandum from Michael A. Pearson, INS Executive Associate Commissioner of Field Operations, to INS Regional Directors, “Detention Guidelines Effective October 9, 1998,” October 7, 1998.

⁴⁵ Memorandum from Asa Hutchinson, Under Secretary for BTS, to Robert Bonner and Michael Garcia, “Detention Prioritization and Notice to Appear Documentary Requirements,” October 18, 2004.

⁴⁶ Determinations as to whether a particular alien is a “high” priority detainee or not, for example, sometimes rest on a judgment as to the “significance” of a related investigation.

Current CBP border enforcement priorities are not reflected in DRO's detention practices to the extent they were in the past.⁴⁷ Senior CBP officials, both at headquarters and in the field, assert that some mission-critical CBP detention priorities aimed at creating a deterrent to illegal immigration and protecting national security are not reflected in DRO's detention practices.⁴⁸ Border Patrol concerns about detention priorities are chiefly concentrated around the apprehension of illegal aliens from countries other than Mexico. Unlike Mexican nationals, who may elect to be voluntarily returned to Mexico, OTMs for the most part cannot be repatriated immediately. In contrast to Mexican nationals, OTMs apprehended by the Border Patrol crossing the southern border cannot simply be turned over to Mexican immigration authorities and, instead, require the preparation of travel arrangements, notification of their home country's consular officials, and preparation of travel documents (i.e., passports and visas).

More than 70 percent of OTMs apprehended by the Border Patrol are released on their own recognizance. Because DRO detention priorities do not single out OTMs apprehended by the Border Patrol, other characteristics within OTM subgroups (e.g., the proportion with a criminal history), DRO's regional apportionment of detention space funding, and DRO field offices' discretion tend to dictate the percentage of OTMs detained in a given part of the country. Consequently, OTM detention rates vary substantially from one area to the next. Along the Texas-Mexico border, for example, OTM detention rates ranged from about 40 percent in El Paso, to about 60 percent in Marfa, to about 10 percent in Del Rio. Variations such as these may effect changes in how alien smuggling organizations operate and can drive immigration trends. Changes in these trends, in turn, directly affect the Border Patrol's operations and deployments.

Impediments to Effective Coordination

⁴⁷ DHS points to the fact that CBP was represented in discussions surrounding the development of BTS' detention prioritization guidelines as evidence that its border enforcement priorities are reflected in DRO's detention practices. We do not contest the fact that CBP was present for the development of BTS detention prioritization guidelines, but instead highlight a significant change with respect to who interprets and implements this guidance. DRO's new and exclusive authority to interpret guidelines on detention prioritization is not inconsequential – several people we spoke with in both CBP and ICE indicated that DRO has significant flexibility in apportioning bed space.

⁴⁸ DRO staff stress that its financial constraints have forced the organization to release aliens it would rather detain and point to ICE's financial challenges as a reason why DRO is unable to accommodate all of CBP's detention priorities. DRO officials also indicate that the organization's ability to apply discretion in detention placements has been restricted increasingly by the growth of its mandatory detainee population, which stood at 87 percent in June 2005. We believe that, whatever DRO's margin for discretion, DRO's application of that discretion will be the source of some interagency tension if its detention practices are not coordinated with CBP.

In the INS, the necessary institutional supports were in place to facilitate operational coordination between apprehending components and detention operations. Because INS' detention and apprehending components were accountable to a single chain of command, appropriate adjustments were easier to implement. This arrangement also enabled lower level managers to monitor implementation and ensure compliance with plans for coordination.

By contrast, coordination between CBP and ICE now occurs across a significant institutional boundary. Significant coordination efforts require the support of the leadership in both agencies and, at times, BTS. When a decision must be obtained at these senior levels, the field managers responsible for implementing the coordination effort are sometimes unable to make effective or timely operational adjustments in response to changing conditions.

DRO's use of bed space to support BTS' ABCI illustrates the counterproductive inflexibility sometimes imposed by coordination across agency lines. DRO leases bed space at a correctional facility at Otay Mesa, CA. To ensure the availability of sufficient bed space to support the detention of aliens apprehended in ABCI, DRO's field office overseeing operations at the Otay Mesa facility was instructed to reserve 250 beds there for ABCI. However, this reserved bed space has rarely been fully used. According to the Otay Mesa field office director, ABCI's use of the bed space had not exceeded 150 beds during the four-month span prior to our visit. Rather than using this available bed space to fulfill local detention needs, the field office director was told to continue to preserve this additional space because it supported a BTS initiative.

In other cases, the senior managers behind efforts at interagency coordination are either too far removed to note failures to comply with plans or lack an effective mechanism to arbitrate differences and enforce compliance. Senior CBP and ICE managers recently described coordination between the two organizations on the Border Patrol's use of expedited removal (ER) to be positive. However positive coordination efforts may be overall, Border Patrol's expanding use of ER also provides a valuable case example of the challenge in coordinating across agency lines.

Expedited removal is a procedure whereby authorized CBP staff may issue a removal order without presenting the case to an immigration judge.⁴⁹ Unlike aliens in other removal proceedings, most aliens in the ER process *must be* detained pending removal to their home country.⁵⁰ After DHS extended the authority for expedited removals to the Border Patrol in August 2004, the Border Patrol held discussions with DRO on its capacity to process and detain new ER cases and agreed to limit Border Patrol ER case referrals to DRO to 30 per day.⁵¹

Without an arbiter to ensure compliance with the terms of the arrangement, the Border Patrol exceeded its agreed upon 30 per day limit.⁵² Reports from DRO's field offices serving Border Patrol's Laredo and Tucson sectors indicate that the Border Patrol regularly referred more than 30 ER cases a day to DRO at those locations through May 2005. Annualized, Border Patrol's excess OTM ER case referrals to DRO over the September 2004 to May 2005 interval would have exceeded Border Patrol's ER quota by more than 1,800 referrals and cost DRO approximately \$9 million more in bed space costs than it agreed to support.

Decline of Traditional Detention and Removal Support Activities

Under the INS, regional and district-level managers often detailed detention officers to specific POEs or Border Patrol sectors to provide dedicated support on a daily basis. Detention funds were used to provide meals, guard support, and supplies for the Border Patrol and POE operations.

The basis for this staff and resource sharing arrangement disappeared with the division of the INS' immigration enforcement units into CBP and ICE. Fourteen months after DHS was established, BTS' Under Secretary determined that DRO's functional support of CBP would continue at "current" or "historic levels" in some important areas. Consequently, at points, DRO

⁴⁹ The authority to perform ERs was a direct outgrowth of the *Illegal Immigration Reform and Immigrant Responsibility Act of 1996* (IIRIRA). The INS began performing ERs on a limited scale at POEs on April 1, 1997. Persons removed from the United States through the ER process are barred from returning to the United States for a period of at least five years, though they may apply for a waiver to return sooner.

⁵⁰ By law, aliens in the ER process must be detained until they are removed, unless they have been determined to have a credible fear of prosecution upon return to their country of origin. (8 USC §1225(b)(1)(B)(iii)(IV))

⁵¹ In the past, OFO had the sole authority to pursue the expedited removal of aliens. (69 Fed. Reg. 48877, August 11, 2004)

⁵² CBP and DRO have had subsequent discussions on the allocation of bed space in support of the Border Patrol's use of ER. As of September 2005, DHS reported that DRO was accepting approximately 50 ER referrals a day from the Border Patrol and dedicating close to 1,000 beds to Border Patrol ER referrals. Also in September 2005, DHS extended Border Patrol's authority to use ER to the entire Southwest border region.

units are still responsible for the transport and care of aliens who are in the custody of CBP.⁵³

CBP officials maintain that DRO is not contributing the level of transportation support required. CBP inspectors in all but one location we visited reported that DRO's level of service and responsiveness has declined. The Border Patrol expressed similar concerns with the level of transportation support DRO is providing. According to Border Patrol managers, the Border Patrol has had to assume a growing share of initial transportation responsibilities. These expanded transportation duties have prompted Border Patrol agents to obtain commercial drivers' licenses in order to drive buses to transport aliens historically driven by DRO officers.

Some DRO units previously assigned to Border Patrol stations remain.⁵⁴ However, under the current organizational structure, these DRO units have been caught in an organizational "no man's land." Most are managed on a day-to-day basis by the Border Patrol, but receive training and promotions from DRO, which is also responsible for disciplinary action. Without clear lines of accountability, performance has reportedly suffered in some areas along with morale.⁵⁵

Overall, areas of continued DRO functional support to CBP are a source of conflict between the organizations. Disagreements over precisely what levels of support DRO is to provide CBP are common. Disputes sometimes arise from different understandings of what levels of support DRO provided in the past. In other cases, contradictory interpretations of how to apply historic levels of support in a new operating environment with evolving CBP support requirements have fed interagency tensions.

While DRO continues to provide functional support to CBP in some areas, in other areas, BTS asked CBP to perform functions previously handled by DRO. Whether in response to BTS' order or to cover for a reduced level of service from DRO, CBP has developed its own capability to perform new functions. Because the CBP employees and resources performing functions previously handled by DRO were removed from inspections and patrol functions, the resources allotted to these functions have been reduced. Meanwhile, because the staff and resources CBP has had to redeploy to

⁵³ Memorandum from Asa Hutchinson, Undersecretary for BTS, to Robert Bonner and Michael Garcia, "Costs Associated with the Care and Custody of Aliens," July 20, 2004.

⁵⁴ The aforementioned memorandum declares that, "ICE will continue to supply, at current levels, Immigration Enforcement Agents (IEAs) to the Border Patrol to assist with transportation operations. ICE will continue to pay overtime at historic levels as needed for IEA's assigned to the Border Patrol."

⁵⁵ Refer to DHS OIG letter report, "Immigration Enforcement Agent Position," June 2005.

support these new functions are not specially equipped to handle them, the performance of these new functions likely has deteriorated.

Consequences

ICE's funding and accounting system difficulties have affected DRO's ability to perform its detention and removal functions and contributed to inefficiencies in processing apprehended aliens. While ICE financial situation may improve, in the long term DRO's ability to meet all demands will nonetheless continue to be limited by the appropriations available for detention bed space, removal costs, and related expenditures. When resources are scarce, as here, they must be allotted carefully to fill to the extent possible the competing needs of each agency. Achieving this goal is more difficult when only one of the two parties may participate in the decision-making. Consequently, though there are a number of pressures that influence the department's ability to fully meet its detention and removal needs, we remain concerned that the present relationship leaves CBP under represented in planning and apportioning bed space.

Shortcomings in national coordination between CBP and ICE have contributed to imbalances between CBP's apprehension efforts and ICE's detention and removal activities. DRO's strategic planning and heightened focus on interior enforcement is at variance with CBP's emphasis on increasing border apprehensions. Without the support of increased transportation, detention space, and detention and removal staff, increases in apprehensions make little sense.

Further, with diminished coordination between CBP detention priorities and DRO's detention practice, an important tool for deterring illegal immigration has been undermined. CBP is unable to direct ICE's detention resources to emerging cross-border illegal immigration trends and high priority aliens apprehended by the Border Patrol. As a result, illegal aliens CBP considers priority detainees are released into the community with little expectation of removal. We found that the morale of CBP's apprehending units has suffered as they increasingly regard their alien apprehension efforts to be hollow victories.

For deterrence to work, aliens considering illegal entry into the United States must expect a very real prospect of apprehension, detention, and removal. With diminished CBP influence on which aliens are detained and a lessened threat of detention and removal, the deterrent effect of CBP's alien apprehension efforts has been weakened.

Coordination of Investigative Operations

During our review, ICE and CBP employees spoke compellingly of the need for close communication and coordination for effective enforcement of customs and immigration laws. However, CBP inspectors and Border Patrol agents perceive ICE as unresponsive to their investigative needs; CBP inspectors and Border Patrol agents have begun referring more cases to other investigative agencies according to ICE and CBP employees. In addition, CBP is developing internal investigation capabilities. Further, they said, the overall level of cooperation between CBP and ICE investigators has declined.

In this section we discuss the environment in which ICE's investigation function and CBP's inspection function operates. We describe how the current organizational structure has led to a decline of coordination and information sharing between CBP and ICE and to ICE's reduced responsiveness to CBP's investigative referrals. We discuss the consequences of CBP's and ICE's inability to coordinate the investigation and inspection functions. We conclude this section with a case study illustrating the impact of this coordination problem on border security operations.

Operational Environment

CBP inspectors screen visitors and goods at the POEs to determine their admissibility and apprehend violators. Border Patrol agents apprehend aliens and interdict goods that have illegally entered the United States between the POEs.⁵⁶ ICE investigators investigate suspected cases of immigration and customs law violations, collect evidence, and prepare the cases for prosecution by ICE or by the United States Attorney.⁵⁷ Many of ICE's investigations are

⁵⁶ See Appendix D, Organizational Overview of Customs and Border Protection.

⁵⁷ The merging of customs and immigration authorities into one investigative body created a potentially powerful enforcement mechanism. ICE investigators have authority under Title 19, United States Code, which permits them to pursue complex banking and financial misconduct cases, conduct searches without first obtaining a warrant, and seize assets of criminal enterprises engaged in customs violations. In addition, ICE investigators have Title 8 authority to make arrests without a warrant for immigration violations. The melding of these customs and immigration law authorities allows ICE investigators to pursue both avenues with unique efficiency and thoroughness, making cases stronger and more likely to be accepted for prosecution with more significant penalties. For more on ICE, see Appendix E, Organizational Overview of Immigration and Customs Enforcement.

initiated as a result of information obtained from CBP apprehensions.⁵⁸ CBP is often dependent on ICE for the investigation and prosecution of crimes occurring at the POEs or between the POEs.⁵⁹

CBP inspectors, Border Patrol agents, and ICE investigators can improve their effectiveness by exchanging information that they obtain during their respective operations. For example, the Border Patrol may detect the repeated use of a smuggling route or other pattern that could indicate that there is a larger criminal enterprise that ICE should investigate. Alternatively, an ICE informant may relate information to CBP inspectors about a planned delivery of narcotics through a POE checkpoint. ICE's FDL may discover a new way for CBP to detect counterfeit immigration documents, and ICE investigators sometimes require CBP's alien entry and travel records.⁶⁰

In recognition of these interdependencies, INS and USCS investigators were assigned to POEs and Border Patrol stations in the past. They worked with inspectors and Border Patrol agents on common task forces and policy working groups. These interactions bred relatively collegial communications and meetings, coupled with easy avenues by which to express displeasure when cooperation was not forthcoming or timely.⁶¹

The maximum efficiency and effectiveness of the inspection and investigation functions of the immigration enforcement continuum can only be achieved through close coordination at all levels. For this reason, CBP and ICE have realized a need to formalize procedures between one another. In November 2004, they established an MOU to govern the interactions between Border

⁵⁸ In FY 2004, ICE initiated 11,065 investigations in response to CBP referrals. CBP referrals accounted for 23 percent of all criminal cases initiated by ICE. See Appendix F, Operational Scenarios Illustrating Interconnectedness Between CBP and ICE.

⁵⁹ See Appendix F, Operational Scenarios Illustrating the Interconnectedness of Customs and Border Protection and Immigration and Customs Enforcement.

⁶⁰ Proponents of merger told us that all customs and immigration enforcement stems from a person or thing crossing the border and that this common origin warranted reunion of the separated functions. The argument is partially valid but has to be discounted. ICE fugitive task forces, investigations of child pornography, alien slavery and sweatshops, intellectual property rights cases, and employer sanctions, to list a few examples, do not appear to require close coordination with CBP personnel. While we agree that there are areas in which interaction between border personnel and ICE investigators is vital, the dependency is not as comprehensive as some proponents of merger argued. Refer to Appendix F, Operational Scenarios Illustrating Interconnectedness Between CBP and ICE for a description of these interactions.

⁶¹ Legacy USCS employees said that the relationships between inspectors and investigators in the USCS were especially good, describing a synergy that improved the performance of both. Former INS inspectors and investigators said that their relationship was not as close, due in part to the presence of senior inspectors who investigated some immigration violations at the POEs. The relationship of Border Patrol agents and its ASU investigators was reported to be stronger. The two worked together on alien-smuggling cases and developed a friendly and cooperative rapport.

Patrol agents and ICE investigators.⁶² CBP and ICE are negotiating a similar MOU to govern interactions between CBP inspectors and ICE investigators.

However, as we discuss in the next section, the ability of MOUs to effectively coordinate CBP and ICE operations is doubtful. MOUs are valuable tools for establishing protocols for managing national level programs between two organizations. They may also be useful for managing more local or regional programs for special purposes or of short duration. MOUs are not effective as tools for managing day-to-day operations that involve complex interactions between two organizations. They are not comprehensive or flexible enough to adjust to the changing environmental dynamics that are inherent to border security operations.

Problems with Field Coordination

Many CBP employees reported that ICE no longer accepts as many case referrals from CBP inspectors and Border Patrol agents. Senior CBP and ICE field staff said that CBP inspectors and Border Patrol agents no longer refer as many cases to ICE, but refer them to other law enforcement agencies instead. In addition, ICE investigators and senior field staff complained that CBP is expanding its own investigative authority to retain and investigate cases. Employees of both organizations also complained of a decline in overall cooperation between CBP and ICE.⁶³ A number of employees expressed concern that as legacy employees retire or resign, pre-DHS working relationships will lapse and coordination will decline further.

Reduced Responsiveness

Many CBP inspectors and Border Patrol agents, as well as some ICE investigators, reported that ICE investigators' acceptance rate of CBP case referrals has declined significantly. Some attributed this decline to the ICE hiring freeze and investigator attrition. Even with a hiring freeze in place for

⁶² Earlier, in April 2004, CBP and ICE entered into an initial MOU establishing basic guidelines for interactions between Border Patrol agents and ICE investigators with regard to alien smuggling cases. In November 2004, CBP and ICE entered into an MOU establishing protocols for all interactions between Border Patrol and ICE Office of Investigations. This MOU, entitled, "Guidelines Governing Interaction between ICE's Office of Investigations and CBP's Office of Border Patrol," dictates methods of information sharing, case deconfliction, and other cooperation, such as controlled deliveries. The MOU also requires a six-month review and a one-year review to be succeeded by reviews every two years, or at any time upon request by either party. The six-month review is underway.

⁶³ Many indicated that the MOUs governing Border Patrol and ICE investigator interactions are not effective at establishing good working relationships because the MOUs are not enforced and cannot address all the situations that arise.

part of the period, however, the number of ICE investigators increased from 5,749 in October 2003 to 6,037 in February 2005.⁶⁴

Some ICE investigators said that turf battles and competition between CBP and ICE accounted for the change. For example, we were told of a situation in which ICE elected not to open an investigation into a possible financial crimes case because CBP had already taken credit for the money that was seized.

According to a CBP supervisory inspector, the decline in ICE investigators' response is due in part to having dual chains of command. In the INS, when investigators would not respond to inspector referrals, the inspectors could request assistance through INS' single chain of command. The supervisory inspector said that because of the dual chains of command, there is no recourse to induce the investigators to respond.

Many Border Patrol agents attributed the decline to mismatched agency priorities. They contend that ICE is not focused on alien smuggling to the extent that it should be and that ICE refuses too many smuggling cases.⁶⁵

One factor that may be contributing to CBP's perception that ICE investigators are not responsive to CBP investigative requirements may be a training issue. ICE has not fully implemented a program to provide training for legacy INS investigators in customs matters and for legacy USCS investigators in immigration matters. While ICE has conducted a two-week training session to cross train legacy investigators in immigration and customs matters, this training by itself is not adequate. In May 2005, ICE officials acknowledged this to us and indicated that they were beginning to develop plans for a more comprehensive cross training program.

CBP officials recognized very early the significant training issues associated with its "One Face at the Border" program. CBP officials also conducted the two-week orientation training for all CBP inspectors. But they recognized that this effort fell well short of fully integrating customs and immigration inspection programs. They developed comprehensive long-range training plans that will be rolled out in increments over the next several years. While it is too early to evaluate the effectiveness of the training program, it is clear that CBP management understood and acknowledged the challenges and took

⁶⁴ From DHS Tri Bureau On-Board by Occupation Analysis, prepared by CBP Human Resources Management Personnel Systems staff, February 24, 2005.

⁶⁵ In the INS, smuggling cases uncovered by Border Patrol agents were referred to the Border Patrol's anti-smuggling unit (ASU) investigators.

steps to facilitate the integration of the customs and immigration inspection programs.

In May 2005, more than two years after DHS was created, ICE was just beginning to address the significant challenges of integrating customs and immigration investigation programs. Information we received from CBP inspectors regarding the responsiveness of ICE investigators suggested that it was not always so much the investigator's unwillingness to respond but an uncertainty on the part of the investigator on how to respond. For example, when a legacy USCS investigator is asked to respond to a CBP referral pertaining to an immigration issue, it was suggested to us that if the investigator was uncertain of the investigative value of the referral as an immigration matter, the investigator may be less likely to accept and respond to the referral. Many Border Patrol agents claimed that this dynamic was occurring. While the purported decline in ICE referral acceptance rates may be attributed to poor coordination between CBP and ICE, it may also have genesis in the inadequate training provided to ICE investigators.

Cases Referred to Other Law Enforcement Agencies

CBP inspectors and Border Patrol agents said they increasingly refer cases to other law enforcement agencies. A few CBP inspectors and Border Patrol agents said that they will not refer cases to ICE because they believe that the current organizational structure limits ICE's jurisdiction only to interior enforcement.⁶⁶ One Border Patrol agent said that competition for credit motivates Border Patrol supervisors to discourage Border Patrol agents from referring cases to ICE investigators. Others said that they refuse to refer cases to ICE investigators because they do not trust ICE investigators to conduct the investigation thoroughly.⁶⁷ A Border Patrol manager said that he would never refer anything to ICE, but would refer cases to DEA and FBI because he believed that the FBI and DEA would conduct a better investigation than would ICE.

Further, CBP inspectors and Border Patrol agents said that they chose not to refer some cases to ICE because ICE investigators do not provide feedback on

⁶⁶ See "Reorganization Plan Modification for the Department of Homeland Security," January 30, 2003, U.S. Congress, House of Rep., 108th Congress, First Session, House Doc. 108-32. The President's modification granted ICE authority "to enforce the full range of customs and immigration laws within the interior of the United States." It granted CBP the immigration and customs missions related to borders and POEs.

⁶⁷ The competency concern appears limited to instances where a former customs agent is assigned to an immigration matter (or presumably also when an immigration agent is assigned to a customs matter.) While this may explain some of the reluctance to refer cases to ICE investigators, it is an issue related to ICE's management of the cross-training problem and is not relevant to the scope of this review.

the cases the inspectors and Border Patrol agents refer. Feedback is important because it provides CBP inspectors and Border Patrol agents a measure of satisfaction of knowing that their apprehensions resulted in successful prosecutions. More importantly, information uncovered during an investigation can assist CBP inspectors and Border Patrol agents to better identify trends and emerging threats. Some CBP officials said the feedback problem has deteriorated under the current organizational structure. Others said that it has remained the same but that the dual chains of command interfere with their ability to seek redress if they do not receive feedback.

To illustrate, an ICE investigator said that an inspector at a land POE discovered vehicles attempting to enter the country with illegal narcotics. The illegal narcotics and the vehicles were seized, and several aliens were arrested. The CBP inspectors did not refer the case to ICE investigators for federal prosecution. Rather, they contacted the local law enforcement agency to investigate and prosecute the case under state law. The port director knew of and approved the inspectors' actions because he believed that ICE was ineffectual, and he was annoyed that ICE investigators had not provided feedback on cases that inspectors had referred in the past.

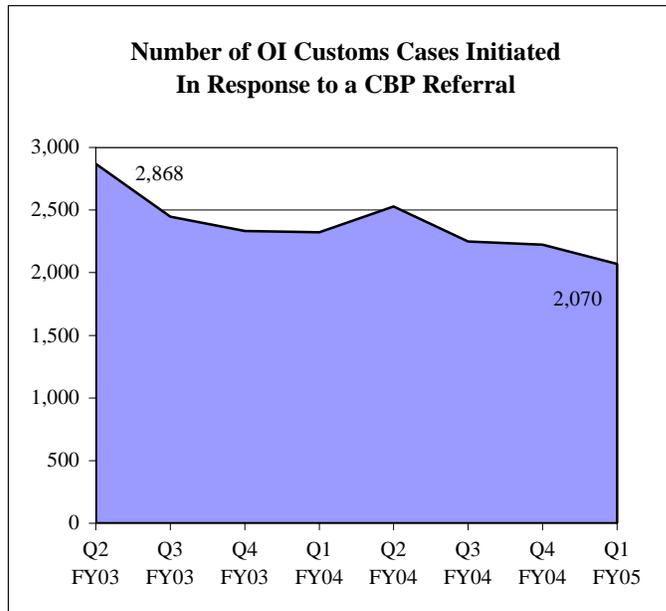
According to a senior ICE manager, in order to avoid referring financial crime cases to ICE investigators, some Border Patrol agents have intentionally classified cases as narcotics cases so that they could refer them to DEA. He cited an example of Border Patrol agents referring a case to DEA that involved an illegal alien crossing the border with an amount of currency in excess of that allowed by customs law. The justification for the referral to DEA was that the alien was also found with the remains of a marijuana cigarette. While the MOU between the Border Patrol and DEA requires that the Border Patrol refer narcotics cases to DEA, this example suggests that the narcotics classification was made to avoid referring the case to ICE.

DHS and CBP headquarters managers asserted that the policy is to refer all cases to ICE for investigation. The exceptions are narcotics interdictions by the Border Patrol, which are referred to DEA in accordance with a long-standing MOU, and terrorist-related cases that are referred to the FBI. They said our conclusions were based on the opinions of a few CBP inspectors and Border Patrol agents. While it is true that the numbers of CBP and ICE employees reporting this situation to us were not large, many of those were senior CBP and ICE field managers including Border Patrol Chief Patrol Agents, ICE supervisory special agents, and senior CBP managers. Further, the reporting was not confined to a particular location or region. CBP and ICE employees stationed across the country from New York to Tucson provided this information to us. We could not determine why senior field

managers were not in compliance with stated CBP and ICE policy nor could we reconcile the differences in perceptions in the current operating environment between CBP and ICE field operations and headquarters staffs. In fact, ICE officials said that they were unaware of the situations that we described.

CBP Customs Referrals

A complete picture of the number of ICE investigations opened in response to CBP referrals is not available for the full period since the formation of CBP and ICE. Due to issues arising from the transition from one data system to another, ICE immigration case data is not complete for the first several quarters after ICE was formed. As a result, we were unable to apply this data in our analysis. Nevertheless, ICE customs case initiation data for the period is considered complete and reliable, and we have presented it below. It is worth noting, however, that this case data does not reflect the full scope of ICE investigative casework pursuant to CBP referrals. During the first quarter of FY 2005, about 17 percent of all criminal cases ICE initiated in response to a CBP referral were immigration cases. Trends within this subset of cases are not reflected in the chart below.



The number of customs cases that ICE opened as a result of CBP referrals has declined, indicating that either ICE investigators are not accepting as many

CBP customs case referrals, that CBP inspectors and Border Patrol agents are not referring as many cases to ICE, or both. Between the second quarter of FY 2003 and the first quarter of FY 2005, the percentage of ICE customs cases arising from CBP referrals has declined from 41 percent to 34 percent. While other factors may have contributed to this decline, the large volume of testimonial evidence from CBP and ICE employees strongly suggests that this data reflects a degradation of the coordination of investigations between CBP and ICE.⁶⁸

ICE OI Customs Cases Initiated by Referral Source*								
Referral Source	FY 2003			FY 2004				FY 2005
	2nd Qtr	3rd Qtr	4th Qtr	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	1st Qtr
CBP Referrals**	2,868	2,447	2,334	2,323	2,529	2,249	2,225	2,070
Total Referrals	6,918	6,284	6,424	6,856	7,219	6,383	6,802	6,120
CBP Share of Total	41%	39%	36%	34%	35%	35%	33%	34%

*ICE OI receives referrals in response to which it does not open a case. Referrals such as these are not reflected in this table.

Customs cases include the following case categories: drug smuggling; general smuggling; financial investigations; regulatory compliance; fraud; illegal exports; customhouse licenses and identity cards; foreign/domestic cooperation; munitions control; navigation; other criminal; and theft, loss, damage and shortage.

**For comparative purposes CBP referrals for the full period include those from AMO, which was not initially part of CBP.

Because ICE does not maintain discrete referral statistics for CBP's international referrals, these referrals are not reflected in this table.

Decline in Cooperation Between CBP and ICE

CBP requires that all visitors to the POEs, including ICE investigators, check in before being admitted to the POEs. In some cases, CBP inspectors must escort ICE investigators during their visits. In the past, investigators were permitted unrestricted access to a POE. CBP inspectors and ICE investigators said that this rule has served to amplify tensions between the two groups and degrade their willingness to cooperate with each other.

CBP headquarters officials said that the POE visitation policy had not changed. This is true in that it has always required that visitors sign in and be escorted while at the POE. What has apparently changed is the application of this policy to ICE investigators. ICE investigators said that they were not

⁶⁸ Other factors contributing to the change might include a change in the threshold standards U.S. Attorneys use for accepting cases.

considered visitors when the inspectors and investigators were part of the same organization.

In addition, ICE investigators complained that what used to be routine requests for assistance in USCS and INS are no longer honored by CBP. For example, if an inspector was fluent in an unusual language, or had expertise in a particular area of customs regulations, investigators could request to have those individuals detailed to them to assist with an investigation. According to ICE investigators, now some CBP managers routinely deny such requests.

Consequences

The coordination issues raised regarding investigative activities between CBP and ICE have significant ramifications. Some ICE investigations may have been impeded because of the lack of coordination and cooperation between ICE and CBP. In addition ICE's unresponsiveness may have prompted CBP to expand its own internal investigative capability, creating even more coordination problems.

Decline in Narcotics Arrests, Convictions, and Seizures

A decline in the number of CBP referrals and the acceptance of them by ICE may have contributed to a decline in overall ICE investigative outputs in certain case categories. In FY 2003, more than six in ten drug smuggling investigations opened by ICE were opened in response to a CBP referral. When the number of investigations opened in response to a CBP referral fell in subsequent years, so did ICE's narcotics arrests, indictments, convictions, and seizures. Between FY 2003 and FY 2005, as the number of CBP referrals of this type declined, the number of arrests decreased by 24 percent, convictions by 51 percent, and seizures by 23 percent. While there may be many factors influencing this decline, this data combined with the volume of testimonial evidence suggests that degradation of border enforcement operations has occurred, in part, due to the ineffective coordination between CBP and ICE.⁶⁹

⁶⁹ There is no evidence that the flow of illegal narcotics has slowed, and trends in CBP drug seizures do not appear to correspond with trends in the number of drug smuggling cases ICE has opened in response to CBP referrals.

**Reduced Number of Referrals Leads to a Decline in
Arrests, Convictions, and Seizures**

ICE OI Drug Smuggling Case Outputs			
Outputs	FY 2003	FY 2004	FY 2005*
CBP Referrals**	7,140	6,392 <i>-10%</i>	5,698 <i>-11%</i>
Total Referrals**	11,814	10,799 <i>-9%</i>	9,833 <i>-9%</i>
Arrests	11,441	10,543 <i>-8%</i>	7,975 <i>-24%</i>
Indictments	7,929	6,940 <i>-12%</i>	3,540 <i>-49%</i>
Convictions	8,103	7,221 <i>-11%</i>	3,527 <i>-51%</i>
Seizures	6,809	6,172 <i>-9%</i>	4,733 <i>-23%</i>

*FY 2005 statistics are annualized totals based on referral data through 03/04/05 and arrest, indictment, conviction and seizure data through 02/23/05.

**Referrals in response to which ICE OI initiated a case.

ICE Investigations Compromised

Some cases may be impeded if they are not referred to ICE for proper investigation, resulting in suspected criminals not being prosecuted. An ICE investigator told us how CBP inspectors not referring a case to ICE compromised his case. The investigator was conducting a financial crimes and money laundering investigation. He created a TECS lookout for a suspect requesting that, upon contact with the suspect, the inspectors contact the investigator immediately so that he could question the suspect and examine his documents. When the suspect arrived at the POE, three CBP inspectors examined the lookout record.⁷⁰ They copied the suspect's travel documents but, rather than contacting the investigator, the inspectors referred the case, along with the copied documents, to the FBI. Because the investigator was

⁷⁰ TECS notifies the owners of records, in this case the investigator, when the record has been read.

not contacted when the suspect arrived at the POE, he missed the opportunity to question the suspect about the suspect's financial dealings.⁷¹

CBP Is Expanding Its Internal Investigation Capability

CBP is expanding its internal investigation capabilities to investigate cases identified by CBP inspectors and Border Patrol agents. This action complicates coordination efforts. Further, it creates opportunities for both agencies to unknowingly conduct simultaneous investigations on the same criminal activity and potentially compromise cases.

CBP Enforcement Officers

CBP plans to expand the number, authority, and jurisdiction of CBP enforcement officers. These positions were called "senior inspectors" in the INS and were responsible for investigating certain immigration cases at POEs.⁷² In October 2004, CBP announced a pilot program to increase the number of CBP enforcement officer positions and to broaden the scope of their authority to include criminal violations of the federal customs and drug statutes.⁷³ Additionally, the CBP enforcement officers' jurisdiction would extend beyond the POE.

ICE investigators and senior managers expressed concern about the planned expansion of CBP enforcement officers, citing the lack of investigative training of CBP enforcement officers as one of their concerns. One investigator told us of a case in which an alien arrived at a POE with illegal narcotics. The CBP enforcement officer interviewed the suspect and obtained a description of a second suspect waiting in the airport to whom the suspect was to deliver the narcotics. Instead of immediately referring the case to ICE, the CBP enforcement officer intercepted the second suspect, who was carrying a large amount of cash. Because no transfer of narcotics and cash took place between the two suspects, the case against the second suspect was compromised.⁷⁴

⁷¹ The case was referred to an FBI special agent who worked closely with the ICE investigator. The investigator was able to obtain the copies of the documents from the FBI special agent. Among those documents, the investigator found financial records that were important to his case.

⁷² Senior Inspectors investigated cases involving certain alien smuggling, document fraud, and attempted illegal entry for criminal prosecution by United States Attorneys.

⁷³ Currently, there are 238 CBP enforcement officers nationwide.

⁷⁴ An ICE investigator told us that, in this case, the evidence of a person meeting the physical description given and carrying a large amount of cash is insufficient to meet criminal prosecution standards.

CBP officials acknowledged our concerns with this potential duplication of investigative activity and compromise of cases. To reduce the likelihood of these occurrences, they plan to convene working groups involving CBP and ICE officials to develop processes and protocols to avoid interference with ICE investigations. They also stated that the CBP investigators will only, “pursue cases that are short term in nature with low to moderate complexity.” However, according to the position description for these officers, their responsibilities will include conducting investigations pertaining to the smuggling of instruments of terror. We doubt that this type of case could be either short term or of moderate complexity.

Border Patrol Smuggling Investigations

CBP has reconstituted the Border Patrol’s smuggling investigative capability, allowing Border Patrol agents to investigate some alien smuggling cases.⁷⁵ The MOU, which established procedures for coordinating investigations between Border Patrol agents and ICE investigators, gives ICE investigators primary responsibility for most smuggling investigations but allows that Border Patrol agents investigate some alien smuggling cases.⁷⁶

Despite the implementation of an MOU, significant problems have occurred in coordinating Border Patrol and ICE investigations. An example involved suspected alien smugglers operating out of a hotel room. When a joint ICE - Border Patrol team arrived at the hotel room and knocked on the door, no one answered, but team members could hear people inside. The ICE investigator told the Border Patrol agents that the team would have to get a search warrant, but the Border Patrol agents wanted to have the hotel manager open the door with management’s key. The ICE investigators explained that the evidence from such a search would be inadmissible in court. The Border Patrol agents stated that they were under a different chain of command and did not have to obey the investigator’s instructions. Subsequently, the Border Patrol agents had the hotel manager open the room. Inside they discovered smuggled aliens, but the case was never prosecuted because the evidence was not admissible.

During another joint investigation, Border Patrol agents and ICE investigators wanted to examine the trash at a residence that they suspected was used to

⁷⁵ In the former INS, Border Patrol had investigators assigned to its ASUs. The ASUs investigated alien smuggling activities. The ASU investigators were transferred to ICE when ICE and CBP were established. The reformed ASUs do not have trained investigators assigned to them.

⁷⁶ According to the MOU, Border Patrol must notify ICE investigators of the investigation and must transfer the case to ICE investigators if the SAC so requests.

house smuggled aliens. ICE investigators made arrangements to covertly examine the trash. Without first coordinating with the ICE investigators as required by the MOU, Border Patrol agents went to the residence and examined the trash on the street in front of the residence. Subsequently, the smugglers vacated the residence – and, as a result, the case was closed.

Even though an MOU exists, Border Patrol and ICE have opened duplicate investigations on the same case, sometimes resulting in compromises. In one such case, ICE was investigating a nation-wide narcotics smuggling ring. ICE was relying on information from an informant associated with a group that was using a “stash house” to hold illegal narcotics before shipping them to other locations. To further the investigation, ICE investigators waited for narcotics shipments to leave the stash house before seizing them. ICE anticipated eventually being able to uncover the entire criminal enterprise. However, unknown to the ICE investigators, Border Patrol agents initiated their own investigation of the stash house. The Border Patrol agents went to the stash house and seized the illegal narcotics that they found. The smugglers subsequently discontinued using the residence, and ICE had to close the case because it lost its source of information. The current operational status of the criminal enterprise is unknown.

Decreasing Cooperation Reduces Effectiveness

The current organizational structure has apparently created barriers to cooperation that once existed between inspectors and investigators and is reducing operational effectiveness. To illustrate, one ICE investigator was investigating an alien suspected of terrorist financing and illegal weapons shipments. The investigator learned that the suspect would enter the United States for the first time in years. The investigator asked CBP inspectors at the POE to allow him to question the suspect upon his arrival to the United States. The inspectors told the investigator that he would be allowed to question the suspect at the POE only if a CBP inspector attended the interview. The investigator objected because some of the discussion would involve classified information and none of the inspectors had the necessary security clearances. Despite the investigator’s objections, the inspectors refused to allow the investigator to question the suspect alone. As a result, the investigator interviewed the suspect with an inspector present and was not able to ask all of the questions necessary to develop his case.

The current situation has also brought about a decline in mutual support between CBP and ICE. For example, an ICE investigator required the assistance of a translator. The investigator asked a CBP manager to allow a particular inspector who was fluent in that language to assist him. However,

the CBP manager denied the request, stating that ICE should have its own translation staff. As a result, the investigator had an ICE employee travel 250 miles to provide the required assistance. The investigator said that CBP has denied such requests so many times that he has stopped asking for help.

In another case, one CBP inspector said that, previously, investigators would allow inspectors to view the process of uncovering illegal narcotics hidden in cargo containers. Learning new methods used by criminals to conceal contraband improves the inspectors' ability to locate contraband during future inspections. However, with the current organizational structure, inspectors have been denied the opportunity to observe break down operations.

Case Study: Breakdown in Coordination Between Immigration and Customs Enforcement and Customs and Border Protection

The impact on law enforcement operations and border security because of the poor coordination between ICE and CBP is evident in the execution of controlled deliveries. A controlled delivery is a law enforcement operation in which a known contraband shipment is allowed to continue across the border to its final destination while under law enforcement surveillance and control. Controlled deliveries are pre-planned events that require approval by ICE investigations, CBP's OFO, and the Border Patrol.⁷⁷ CBP allows the load of illegal contraband to cross the border into the United States; ICE investigators follow the load with the intent of identifying additional members of the criminal enterprise.

The success of these operations depends on close coordination between ICE and CBP. Failure to coordinate and cooperate during these types of operations can result in unnecessary danger to the ICE investigators, CBP inspectors, Border Patrol agents, and the general public. It can also mean lost opportunities to identify and arrest additional members of the targeted smuggling enterprise.

According to ICE statistics, the number of controlled deliveries involving narcotics has declined significantly in recent years. The number of controlled deliveries we project ICE will execute in FY 2005 based on controlled delivery figures through March 31, 2005 will be 51 percent lower than the number of controlled deliveries conducted in FY 2002. While a number of

⁷⁷ Usually, the SAC, Port Director, or CPA designate controlled delivery "coordinators" who are normally supervisory-level or higher who negotiate, plan, and approve these types of operations.

factors may have contributed to this decline,⁷⁸ the lack of effective coordination between ICE and CBP may have contributed to the decline in this activity.

CBP and ICE were conducting a joint investigation by ICE and other law enforcement agencies. During a planning meeting, the Border Patrol CPA disagreed vehemently with allowing a controlled delivery operation to continue beyond a certain distance from the border. The CPA would allow the contraband to enter the United States and to travel only a set distance before he wanted it interdicted.⁷⁹ Consequently, several planned controlled deliveries to support the investigation were cancelled. ICE investigators arrested the leader of the targeted smuggling enterprise but were unable to identify the other participants in the criminal enterprise.

The coordination between ICE and Border Patrol for controlled deliveries operations is governed by an MOU issued on November 16, 2004. The MOU stipulates that Border Patrol can approve or deny ICE requests to coordinate controlled deliveries. The MOU specifically authorizes the Border Patrol sector to make the determination as to whether an ICE-requested controlled delivery should be denied. Border Patrol agents and ICE investigators said that disagreements over what constitutes “appropriate safeguards [against losing loads]” occur regularly between ICE investigators and Border Patrol agents.

ICE investigators believed that they had adhered to the conditions of the MOU and blamed the breakdown in cooperation with the Border Patrol. The CPA said that he disallowed the controlled deliveries because he believed that the ICE investigators did not put the appropriate safeguards in place to prevent losing the loads. He further commented that the ICE investigators had a history of losing loads. He said that he did not want to risk having ICE investigators lose a controlled delivery that could potentially contain a weapon of mass destruction.

The MOU allows CBP and ICE to treat each other as sovereign agencies. The CPA, who had no resources invested in the investigation and had articulated no concerns related to safety of the Border Patrol agents or the general public vetoed the continuation of the investigation because of his concern that ICE would lose the load. The responsibility for losing the load was ICE’s and

⁷⁸ Other factors that could account for a decline in the number of controlled deliveries include: a shift in resources due to a stronger focus on anti-terrorism, a shift in traffic patterns or smuggling routes, and a decline in major seizures amenable to controlled deliveries.

⁷⁹ This situation was never elevated to the headquarters level. The CPA’s denial, depending on how rigid the interpretation, was appropriate and within the standards set by the new MOU.

therefore, ICE should have made the decision. The CPA's decision hindered the investigation, limiting the case resolution to the arrest of an individual already known to ICE. The decision also may have harmed ICE's standing with the other participating law enforcement agencies. Ultimately, it is difficult to be certain, but the incident as described by some of the participants raises the question of whether the CPA would have been quite so pre-emptory had he not been insulated from the investigators by his organizational separateness.

Moreover, assuming equal merit to both sides' arguments, the investigation may have been doomed because ICE had no opportunity for a speedy appeal of the CPA's decision. ICE investigators are limited to seeking intervention by higher-level ICE officials to persuade their CBP counterparts to intervene and reverse the CPA's decision. In the meantime, the smugglers may have completed their delivery while the bureaucracies skirmished.

We cited this case as an example of many operational coordination problems between CBP and ICE that were a source of frustration among CBP and ICE employees. These difficulties illustrated the pitfalls of the current organizational structure. The employees' dispute was not with the MOU, although the MOU appears to merit fresh review; rather, their dispute was with the current institutional barriers to effective coordination to accomplish the border security mission.

The MOU does not provide for an effective mechanism for resolving related disputes between ICE investigators and Border Patrol agents. It states that CBP and ICE will form a working group at the headquarters level to address issues that cannot be resolved in the field. This mechanism may be effective for resolving systemic issues and for adjusting policy and procedures on a national level. However, it is not effective for resolving day-to-day operational conflicts, such as the one we described in this example.

CBP and ICE officials said that this event was never reported to headquarters as required by the MOU. We agree that headquarters can do nothing to resolve conflicts in the field if headquarters is unaware of the problems. In commenting on why this situation was not reported to headquarters for resolution, a senior ICE field manager involved with the case stated, "if we would have elevated it to headquarters, a battle [between CBP and ICE] would have ensued that we would have lost. This was based on our past experience with headquarters.... Just think, for this thing to get resolved, it would have had to be elevated to [the Assistant Secretary] And, then [the Assistant Secretary] ... would have to get [the Commissioner] ... to agree. This was not going to happen anytime soon. Probably never." This statement

not only highlights the shortcomings of MOUs as a mechanism for resolving day-to-day operational conflicts, but also serves as an indicator of the problems that CBP and ICE have coordinating their operations.

Coordination of Intelligence Activities

The current organizational structure has not promoted the coordination of intelligence activities between CBP and ICE. The January 30, 2003, "Reorganization Plan Modification for the Department of Homeland Security" transferred the USCS Office of Intelligence to ICE but was silent on what intelligence structure, resources or capabilities, would support CBP's operations.⁸⁰ There is little institutional incentive for CBP and ICE to share and coordinate intelligence. For the most part, CBP and ICE work independently of each other to develop intelligence products that serve their respective needs and do not integrate the products to develop an overall border enforcement strategy.

CBP and ICE have developed separate field intelligence structures that have challenged their ability to work together or exchange information. Further, when they do share information, the mechanisms they use are often ineffective. Similarly, intelligence coordination needs to improve at the national level between CBP and ICE headquarters. The failure to collaborate has led to at least a few cases in which CBP and ICE did not know about important intelligence that the other organization had for an extended period of time.

In this section we discuss the operational environment in which the intelligence functions of CBP and ICE operate. We describe how the current organizational structure has separated CBP's and ICE's intelligence functions, creating challenges in the coordination of intelligence activities at both the national and field levels. We discuss how the current organizational structure reduces CBP's and ICE's ability to collaborate to produce intelligence reports. We also describe how overreliance on TECS to share information is inhibiting timely and effective sharing of intelligence. Finally, we identify some of the consequences of failing to share intelligence and other information in a timely manner.

⁸⁰ While about 470 intelligence positions were transferred to ICE, CBP negotiated to retain approximately 30 intelligence positions for its own intelligence needs.

Operational Environment

Common Intelligence Requirements

CBP and ICE have both shared and independent intelligence requirements to support their interdiction and investigative missions; most of their intelligence requirements overlap. For example, both CBP and ICE require intelligence regarding illegal aliens, criminal aliens, alien smuggling, drug trafficking, fraudulent travel documents, weapons of mass destruction, infrastructure threats, and import and export violations. ICE has a special interest in cyber crime, protection of federal buildings, and illicit financial transactions, while CBP has an interest in information relative to threats to agriculture, border vulnerabilities, and information on shippers, carriers, freight forwarders, and manufacturers. When combined, these intelligence requirements cover the spectrum of potential threats for border security. The maximum efficiency and effectiveness of the intelligence functions, now bifurcated by the current organizational structure, can be achieved only through close coordination at the national and field levels.

CBP's Intelligence Program

CBP's intelligence program involves CBP inspectors and Border Patrol agents in the field, intelligence centers, the National Targeting Center (NTC),⁸¹ and Office of Intelligence (CBP-Intel) at CBP headquarters. Intelligence centers include the Border Patrol Field Intelligence Center (BORFIC) in El Paso, Texas, and the Command and Control Intelligence Coordination Center (CCICC) in San Diego, California. Intelligence is disseminated and received through a myriad of systems, but the principal one used to communicate intelligence and other relevant information is TECS. Daily muster briefings and formal written intelligence bulletins are also used to disseminate intelligence.

ICE's Intelligence Program

ICE's intelligence program consists of six Field Intelligence Units (FIUs),⁸² intelligence units at the SAC field offices, and the Office of Intelligence (ICE-Intel). FIUs produce strategic level intelligence for ICE that may be shared with various members of the law enforcement and intelligence communities.

⁸¹ NTC is the coordination point for all anti-terrorism efforts of CBP. It uses sophisticated information-gathering techniques and intelligence to provide target-specific information to field offices. The NTC also works with CBP-Intel and ICE agents to share information and issue advisories on more immediate threats to the POEs and border.

⁸² FIUs are located in Chicago, New York City, Los Angeles, Tucson, Houston, and Miami.

Also, they provide case support on larger and more complex cases for ICE. Intelligence analysts assigned to SAC field offices primarily support investigations. While ICE-Intel exerts direct line-authority over the FIUs, it does not have direct authority over intelligence analysts assigned to SAC field offices. They report to field office supervisors.

Communications between ICE-Intel, FIUs, and intelligence analysts assigned to SAC offices is maintained through the same types of systems that CBP-Intel uses to maintain connectivity with its field elements. And, like its counterpart at CBP, ICE-Intel uses TECS as its primary system for communicating intelligence and other information relevant to its investigative mission to its field elements.

Problems with National Coordination

More needs to be done to promote information sharing between CBP and ICE. The only formal document that requires intelligence sharing is a November 2004 MOU between ICE and the Border Patrol. However, this MOU is primarily used to guide joint operations against large smuggling operations.

The only effort we identified at coordinating intelligence at the national level was through the daily intelligence briefings held at CBP and ICE headquarters. CBP and ICE send intelligence analysts to both briefings. These briefings are focused on intelligence received from the Intelligence Community and do not involve coordinating intelligence with operational planning. Attendees rarely discuss domestic intelligence gathered by ICE and CBP. These intelligence briefings are helpful and important, but they do not result in the direct coordination of joint operations or interagency strategizing.

One forum exists that could evolve into an effective collaborative effort to develop a national threat assessment to support border security. The CBP Commissioner hosts a daily Intelligence and Operations Briefing.⁸³ At this meeting, CBP managers coordinate operations at the national level based on intelligence received. On May 6, 2005, an ICE representative first began attending this briefing. CBP and ICE are now working together to define the appropriate attendance level for continued direct exchange at the national level. However, ICE participation at this briefing needs to be more regular, and the MOU approving this level of participation is pending.

⁸³ Highlighting this specific briefing, as it is currently run and hosted by CBP, is not an endorsement by the OIG that this briefing should serve ultimately as the mechanism for better coordinating operations between CBP and ICE. We are merely suggesting the benefits of having such exchanges on a routine basis.

Problems with Field Coordination

Apart from entering intelligence reports and other information into TECS, neither CBP inspectors nor Border Patrol agents effectively coordinate intelligence analysis or production with ICE. In contrast, CBP inspectors and Border Patrol agents exchange intelligence regularly among themselves. This has resulted in well-coordinated operations. One example concerns joint operations along the southwest border, where CBP inspectors coordinate pulse and surge inspection operations at the POEs with increased Border Patrol deployments between the POEs in those areas.⁸⁴ Another example involves joint operations along the northern border where CBP inspectors support Border Patrol agents with radiation detection equipment and expertise. They share intelligence and coordinate joint operations without a need for comprehensive formal policies and procedures. The routine sharing of information is attributable to CBP inspectors and Border Patrol agents belonging to the same organization.

Some of the FIUs do a better job of sharing and coordinating intelligence with CBP field offices than others in that they initiate and maintain face-to-face liaison with their CBP counterparts. Where this occurs it is because of the FIU managers' long-time working relationships with their CBP counterparts established under the legacy organizational structure. One FIU has made regular contributions to the weekly intelligence briefings authored by one of the POEs within its geographic area of concern. It also has been able to cultivate, analyze, and exploit intelligence supplied to it by its CBP counterparts on a consistent basis. However, even this FIU reported that it has never "co-authored" any intelligence products with its CBP partners. While contributing to an intelligence report is a step in the right direction, it still falls short of a full collaborative effort to produce an overall regional intelligence assessment to support border security. None of the FIUs has CBP intelligence analysts assigned to it. One FIU manager said he would welcome CBP participation, however, CBP-Intel responded that its staff had never been invited to participate.

Rather than working more closely together to coordinate CBP and ICE intelligence operations, CBP and ICE field intelligence operations are drifting apart. CBP created CCICC because the ICE-sponsored, San Diego Intelligence Collection and Analysis Team (ICAT) was not meeting CBP's

⁸⁴ Pulse and surge inspection operations are heightened enforcement operations that increase intensity of border security screening at specified locations in response to threat information or to increase unpredictability.

intelligence requirements. CBP was concerned that ICAT operations were too narrowly focused on narcotics investigations. Consequently, CBP withdrew from the San Diego ICAT and channeled its efforts toward its own CCICC. Since its creation in October 2003, the workforce composition of the CCICC has consisted mostly of Border Patrol agents.⁸⁵

DHS officials provided us with extensive examples of how CBP and ICE intelligence activities interact. These examples included teleconferences, scheduled briefings, ad hoc meetings, and direct support for specific operations. While some of these examples could have provided a forum for effective intelligence exchange and collaboration on intelligence products, we are concerned whether this collaboration ultimately materialized. Many of the examples cited by DHS were examples of operational interactions and not collaborative intelligence activities. CBP and ICE intelligence field staffs we spoke with often pointed to a lack of meaningful intelligence collaboration between the two organizations.

DHS officials said that intelligence analysis is best conducted at the departmental level or at specialized centers. We agree that regional intelligence centers, focused on the intelligence needs of ICE and CBP field operations within those regions, may be a very effective and efficient means of conducting intelligence analysis and producing intelligence products. They could provide near-real time intelligence support to field operations. However, for such regional intelligence centers to be effective, we recommend CBP and ICE personnel involved in the production of intelligence in the field be co-located and work collaboratively to produce intelligence products. As embodied in the current ICE-led FIU structure, this kind of co-location and collaboration is not occurring.

Intelligence analysis at the departmental level is strategic in nature. It should be used by DHS planners to develop long-range enforcement strategies and more narrowly, to support on-going national enforcement operations. Intelligence products produced at the strategic level are heavily filtered. Much of the information that is filtered out, while of minimal use to strategic planners, would be valuable to investigators, inspectors, and Border Patrol agents in the field.

In May 2005, a team convened by DHS Secretary as part of his 2SR sought to develop proposals to enhance DHS' intelligence capabilities. The team characterized the current DHS intelligence situation as "multiple points of

⁸⁵ In May 2005, more than 18 months after CCICC's creation, ICE assigned two investigators to the CCICC. However, the ICE investigators, even though assigned to CCICC, continue to focus on conducting narcotics investigations.

collection and gathering but without any unified coordination and intelligence/information standards and processes.” The team also found that “DHS components disseminate numerous reports and finished products...but lack true integration and coordination across DHS components.” These findings are affirmations of our conclusion that intelligence collaboration is lacking within CBP and ICE.

Overreliance on the Treasury Enforcement Communication System to Share Intelligence

Many ICE intelligence analysts and investigators believe that entering intelligence reports and other information into TECS equates to effective information sharing with their counterparts at CBP. However, CBP employees have a differing view on the effectiveness of relying on TECS to share intelligence. CBP employees said that they could not access some of the most important ICE intelligence and other information in TECS. Retrieving this information from TECS requires higher-level security access, which the vast majority of CBP employees do not have.⁸⁶ Some of this information could be potentially valuable to CBP in terms of identifying emerging criminal trends and threats at the borders.

For operational purposes and to promote data integrity, we do not advocate unrestricted access to information contained in CBP and ICE databases. Further, we understand that not all CBP and ICE personnel share the same level of need-to-know. Nevertheless, the environment in which inspectors now operate has changed since the events of September 11, 2001. Prior to the terrorist attacks, inspectors needed access to information concerning smugglers, money laundering, fraudulent documents, criminal records, etc. This is sensitive information but usually not classified. Now, with the focus on the counter-terrorism mission, much of the information relating to terrorists and terrorist activities is classified.

Even though TECS was never designed to facilitate intelligence analysis, CBP and ICE use it for that purpose. TECS does not provide an effective forum for

⁸⁶ TECS access is tiered to restrict access to especially sensitive investigative information, such as the identities of certain informants, grand jury information, and information that is protected by law from disclosure. Before viewing any records within these tiers, CBP personnel must first secure the permission of the originating ICE investigator or intelligence analyst of that record. But, before CBP personnel can secure the originator’s permission, they must first know which records to request. This highlights the inherent difficulty of a “pull-oriented” system like TECS. It puts CBP intelligence analysts in the position of having to know which records may be useful to them before requesting access to them. This can be difficult, if not impossible, to do when they do not have a full understanding of the records available to them.

intelligence analysts to produce, retrieve, review, or share intelligence. Intelligence analysts are often unaware of what information is contained in TECS and must hunt through the entire system to retrieve bits of needed information in order to “connect the dots.” Indeed, ICE officials have recognized this shortcoming and are piloting a system to more effectively exploit the vast amounts of data contained in TECS.

Our concern regarding the overreliance on a computer system that is inadequate for sharing intelligence was highlighted in a recent DOJ OIG report, *A Review of the FBI’s Handling of Intelligence Information Related to the September 11 Attacks*. The report discussed how the so-called “Phoenix Memorandum” became “lost” in the FBI’s Automated Case Support System (ACS). The Phoenix memorandum contained information collected by an FBI special agent that noticed a large number of persons with suspected terrorist linkages enrolled in aviation related studies in the United States. The FBI special agent sent this information to FBI headquarters, using ACS, for further analysis. However, this information was never acted on until after September 11, 2001. According to the OIG report, the information was lost because ACS, like TECS, was not a system designed to “push” information to analysts. More significantly, the analysts had to know that the information existed in order to find it within ACS. Just as in the FBI’s case, CBP’s and ICE’s dependency on TECS could similarly result in lost or undisclosed intelligence.

Lack of Collaboration to Produce Intelligence Reports

CBP and ICE usually produce Homeland Security Information Reports (HSIRs) independent of each other that portray only a partial picture of the threats to border security and risk reporting conflicting information.⁸⁷ ICE-Intel stated that it rarely worked with CBP-Intel to produce intelligence products and has never “co-authored” an HSIR with CBP. CBP-Intel similarly said that it has never “co-authored” any HSIRs with ICE-Intel, and added that its intelligence products are not passed routinely to ICE. Additionally, CBP-Intel stated that it never “co-authored” trends and analysis type intelligence reports with ICE.

ICE produces two other products with intelligence value, neither of which is produced by its CBP counterparts. The Report of Investigation (ROI) is used by ICE-Intel to provide specific case information internally to ICE. However, because ROIs are transmitted only via TECS, and because most CBP

⁸⁷ HSIRs are distributed to the law enforcement community.

employees lack the necessary TECS access, they cannot retrieve them. CBP inspectors and Border Patrol agents believe that intelligence contained in the ROIs could assist them in identifying emerging criminal trends and threats.

The other ICE product, the Intelligence Information Report (IIR), is used to communicate intelligence and other information to the Intelligence Community. However, as is the case with ROIs, most CBP employees cannot retrieve IIRs because they lack the necessary security access. Currently, CBP intelligence analysts review classified IIRs, remove or “sanitize” the classified information, and reissue the IIRs in an unclassified format. While this is an acceptable process in light of the lack of inspector security access, potentially valuable information is withheld from those responsible for the frontline defense of our borders. We suggest the CBP revisit its policy concerning security clearances for inspectors in light of the changed environment at POEs.

Consequences

The lack of face-to-face collaboration and the overreliance on TECS as a means to share intelligence and coordinate operations has resulted in few cases in which CBP and ICE did not know about important intelligence that the other organization had for an extended period of time.

An example of this occurred when CBP interdicted several dozen aliens, over a period of several weeks, who were from special interest countries using fraudulent documents from a third country. CBP inspectors and Border Patrol agents made the apprehensions independent of one another. As a result, the initial apprehension reports were individually entered into TECS by the arresting CBP inspectors and Border Patrol agents. Through subsequent interviews with the apprehended individuals, additional information was uncovered that indicated that they all may have been using the same smuggling organization and routes. CBP-Intel noticed the trend, and “connected the dots” that could have led to a broader investigation. CBP-Intel entered this intelligence into TECS. ICE, however, was unaware of this intelligence and did not notice it in TECS for several weeks.

This situation was caused by two problems. The first is the overreliance on TECS as a collaborative intelligence-sharing tool, which it is not. This example demonstrates that valuable intelligence can go unnoticed because TECS does not provide a platform for intelligence analysts to readily retrieve and review intelligence reports. The information in TECS appeared as disparate data points to ICE investigators for several weeks. The second

problem is the lack of face-to-face collaboration between CBP and ICE intelligence analysts.

CBP and ICE use TECS for sharing intelligence and other information. However, the limitations of TECS warrant closer, frequent, and more structured face-to-face interactions among the staff of the two organizations to share intelligence and collaborate on joint intelligence products. Moreover, the discussion above reflects an insularity of thought regarding what intelligence is important and what it may be used for, that can be attributed to the existing organizational structure that separates CBP's and ICE's intelligence activities. The discussion also reflects an unnecessary duplication of intelligence activities and a potential need for broader analytical products than either agency now produces.

The Role of the Directorate of Border and Transportation Security

Although BTS leadership characterized its role as that of an integrator for CBP and ICE, senior managers at CBP and ICE believe BTS needed to provide better assistance in integrating their functions. Further, they maintain that BTS did not adequately address and resolve the issues they encountered and those that we identified in our report. CBP and ICE managers and employees in the field dismissed the value of BTS as an integrator, saying it had not resolved their issues.

There are two principal causes for this concern. The first lies in the way BTS was structured. That is, it apparently did not have the authorities or resources necessary to integrate CBP and ICE functions. The second is that BTS' roles and responsibilities in relation to CBP and ICE were never clearly articulated.

In this section we discuss BTS' inability to overcome the management hurdles created by the current organizational structure. We describe how BTS was inadequately resourced to perform its mission and that organizational roles and responsibilities were never clearly defined. We identify some of the consequences of BTS' coordination problems.

Inadequate Resources to Perform Mission

BTS was not empowered with the necessary authorities to manage a bureaucracy. It lacked line and budget authorities over CBP and ICE. Neither the HSA nor DHS management directives bestow budget authority upon BTS.

Without these important tools, BTS could not induce CBP and ICE to coordinate and integrate operations.⁸⁸ Further, because BTS did not control the budgets of CBP and ICE, it could not synchronize their respective missions and priorities, which led at least indirectly to the issues previously discussed.

BTS did not have sufficient staff to adequately oversee the organizations' operations and often did not have staff with the right operational expertise. BTS had a small management staff relative to the size and complexity of the directorate. The staff was inadequate for managing the integration function, strategic planning, policy development, legislative agendas, staffing issues, and budgets. BTS experienced the same challenges that DHS did, trying to establish a brand new organization without the time or resources to conduct a proper transition while simultaneously staying totally focused on the security mission. During the first two years of its existence, BTS was overwhelmed by incessant demands to produce information. BTS' small management staff spent much of its time "tracking stuff down."

Compounding BTS' small staff size was a heavy reliance on detailees – employees temporarily assigned to BTS from component agencies for a period of weeks or months. While this frequent rotation of staff brought a field perspective to BTS, it did not support continuity of processes and inhibited development of long-term policies and procedures.

Many CBP and ICE managers perceived that part of the problem in obtaining decisions and direction from BTS stemmed from the lack of expertise of the BTS staff. From their viewpoint, the BTS staff did not have sufficient understanding of border enforcement and security operations to formulate policies and render decisions. Some CBP and ICE managers said that BTS seemed to be "off base" with its decisions and attributed this phenomenon to BTS staff not having operational experience.

Roles and Responsibilities Not Defined

CBP and ICE managers complained that BTS never articulated what BTS' roles and responsibilities were in managing the day-to-day and strategic

⁸⁸ BTS' authority over ICE and CBP budgets could be presumed, but was diluted by other currents. The department, with little time to prepare its first budget, sought to consolidate budget preparation in the Management Directorate, leaving little time or opportunity for BTS to play a role. Also, BTS lacked the staff to analyze, arbitrate, or challenge the respective budget proposals. DHS headquarters managers tended to bypass BTS and go directly to ICE or CBP when they needed quick information or a response, and tended to be lax about back channel communications, which allowed CBP and ICE to likewise bypass BTS when seeking resources or operational decisions.

operations of CBP and ICE. DHS' leadership, from the day of its inception, was focused on the protection of the United States. Sufficient energy or resources to building a department and establishing clear roles and responsibilities were not delegated to BTS, CBP, and ICE.

The undefined roles and responsibilities created an environment of uncertainty. According to one senior CBP manager, the uncertainty created an "ethos of paralysis" to avoid disputes and conflicts over roles and responsibilities and creating confrontation.

Consequences

According to CBP and ICE officials, BTS did not control the competition between the two organizations. This environment magnified some of the issues that we discussed and reinforced antagonisms. CBP and ICE often appeared to work at cross-purposes. Rather than force CBP and ICE to work together, BTS led by the maxim "work it out." BTS was not viewed by its leaders as having full responsibility for all of its components' activities and requirements.

CBP and ICE managers said that issues sent to BTS for action were often delayed for months. CBP and ICE managers provided some examples of what they deemed slow decision-making by BTS:

- CBP developed new rules pertaining to the Arrival Departure Information System (ADIS). CBP worked on the new rules for over one year and sent them to BTS for review in February 2004. BTS subsequently decided to have TSA review the rules. As of March 2005, CBP was still waiting for BTS' comments.
- CBP's Immigration Security Initiative (ISI) is a program to assign CBP inspectors to overseas airports to pre-screen passengers bound for the United States. CBP proposed that it pilot the program in Amsterdam, Netherlands. Again, BTS delayed making a decision, preferring to have it reviewed by other organizations. The proposal remained with BTS for six months pending a decision until it received some unexpected, high-level interest. During a conversation between CBP officials and White House staff concerning an upcoming meeting with President George W. Bush and the President of Poland, Aleksander Kwasniewski, CBP officials suggested that the President propose that the ISI be piloted in Warsaw, Poland. BTS immediately

approved CBP's proposal and President Bush announced the program's initiation in Warsaw in a joint statement issued on January 30, 2004.

- BTS did attempt to clarify DRO and CBP responsibilities in regard to detention issues. One of the purposes of this action was to provide information to legacy USCS managers unfamiliar with immigration processes. BTS took a year to develop the memorandum and issued it in June 2004. DRO and CBP managers said that as the memorandum developed, it became "very watered down."
- CBP needed to define minimum security standards for shippers participating in CBP's Customs-Trade Partnership Against Terrorism (C-TPAT) program. C-TPAT identifies high-risk shipping containers and targets them for additional inspection when they arrive in the United States. CBP made its proposals to BTS. CBP managers feel that BTS became focused on complaints and concerns of the shippers rather than focusing on the security issues. As of March 2005, the proposals had been with BTS pending a decision for 10 months.

CBP and ICE managers also complained that policy decisions were sometimes made without consulting them or that decisions were made without fully considering their views. According to CBP and ICE managers, this sometimes led to less than optimal decisions by BTS. They cited the following examples:

- CBP managers believed that making the United States Visitor and Immigrant Status Indicator Technology (US-VISIT) an independent entity and not placing it under the control of CBP was a bad decision. US-VISIT development and deployment processes were removed from the control of the ultimate user – CBP. According to CBP managers, CBP now has no control over US-VISIT policy and BTS has done a "terrible job" bridging US-VISIT development with CBP operations. As a result, they contend that US-VISIT is not fully integrated with CBP requirements even though US-VISIT is at the core of CBP operations – controlling entry into the United States.
- ICE managers complained of one instance where BTS made a decision involving DRO operations without first consulting DRO (or ICE). CIS was developing new rules concerning security background investigations for aliens who have been granted immigration benefits by the courts. After discussing the issue with CIS officials, BTS

decided to assign the responsibility for conducting the security background checks to DRO. ICE officials learned of the decision through casual conversation with CIS officials.

Other Organizational Structure Concerns

In this section we discuss other concerns we have with the current alignments of three organizations within ICE. These are FPS, FAMS, and the FDL. The missions of two organizations within ICE, FPS and FAMS, do not align at all with the customs and immigration enforcement missions of either CBP or ICE. In addition, the current alignment of the FDL in ICE does not lend itself to providing the full range of fraudulent document analysis needed by DHS and will likely lead to the FDL's loss of capability. Customs and immigration enforcement is a critical area of national policy. Leadership needs to be able to focus on a coherent unified mission to safeguard the nation's borders. We conclude that the relocation of FPS and FAMS elsewhere in DHS and the realignment of the FDL with CBP should be considered.

Federal Protective Service

Where to best place FPS has been a topic of discussion for years, long before DHS was established. The congressional appropriations committee for the General Services Administration (GSA) had given consideration to moving FPS out of GSA, noting that FPS, a law enforcement organization, did not belong within GSA, a real estate management and logistics support organization. Another effort to realign FPS occurred after the Murrah Building bombing in Oklahoma City in 1995. At that time, Congress considered moving FPS to the United States Marshals Service (USMS).

FPS' mission, the protection of federal office buildings, has no association with customs and immigration enforcement. Our interviewees were uncertain as to why FPS was aligned with ICE except that it appeared to them that DHS' objective was to consolidate law enforcement missions into one organization. Interestingly, FPS officials stated that they do far more work with other DHS organizations (Federal Emergency Management Administration (FEMA), CIS, CBP, United States Secret Service (USSS), USCG, and Information Analysis and Infrastructure Protection (IAIP)) than they do with ICE. Because of the multiple interactions that FPS has with other DHS organizations, some FPS officials believe the organization could effectively perform its function elsewhere. FPS' mission aligns with USSS'

Uniformed Division and USMS, which perform similar physical security and protection functions.

ICE management faces significant challenges integrating FPS into its operations because of FPS' source of funding. FPS is funded through "rent" received from federal organizations that are tenants in GSA buildings and through reimbursable agreements. This rent is paid to FPS for security services provided to the tenant organization. FPS also receives funds through reimbursable agreements, which are contracts between FPS and a GSA tenant by which FPS agrees to provide additional services for additional fees. FPS can only provide services if those services are paid for through one of these mechanisms. This operational limitation reduces ICE's flexibility and options for using FPS to support its immigration and customs enforcement missions.

FPS officials suggested that the government review some FPS responsibilities that have been delegated out to other federal agencies over the years. These include the following organizations:

- Pentagon Police
- FBI Police
- U.S. Mint Police
- Central Intelligence Agency Police
- Natural Resources Police
- Mount Weather Police (FEMA)
- National Institutes of Health Police
- Department of Commerce Police
- Bureau of Reclamation Hoover Dam Police
- Department of Justice Guard Authority

FPS suggested that if all or some of those authorities were returned to FPS, that the scope and size of the "new" FPS mission would justify a stand-alone organization within DHS or elsewhere in the government. However, the examples above also suggest that the FPS function need not be tied to DHS. Three possible solutions that would more closely align FPS' mission with those of organizations with like missions are FPS could be transferred to the Uniformed Division of the USSS or DOJ's U.S. Marshals Service, which have allied physical security responsibilities, or FPS could be put under the control of DHS' Office of Security.

Federal Air Marshal Service

FAMS' mission, the protection of domestic civil aviation, has little association with customs and immigration enforcement. One reason cited for moving FAMS to ICE was the development of a surge capability during periods of heightened threats to the airline industry. The surge capability called for training ICE investigators in FAMS operations. Once trained, the ICE investigators would be paired with FAMS on flights during periods of heightened security. To date, several hundred ICE investigators have been cross-trained. This external surge capability has, however, only been exercised once during a heightened alert period in January 2004.

Another motive for moving FAMS to ICE was to create a GS-1811 career path for FAMS, but this initiative never came to fruition. The GS-1811 designation would provide FAMS with periodic ground-based assignments to support other DHS law enforcement operations. The BTS Under Secretary denied the conversion of the FAMS GS-1801 positions to GS-1811 positions because the primary duties of the latter position must involve criminal investigations. FAMS positions do not involve a significant amount of investigative work.

There is another curiosity about the current alignment with FAMS in ICE. FAMS stills receives its administrative support and funding from TSA. The reason for continuing this relationship, according to FAMS officials, has to do with the TSA's and FAMS' differing pay systems and the expense of converting FAMS to the ICE pay schedule. Because of this situation, it is somewhat misleading to say that FAMS is part of ICE.

FAMS officials complained that many of the expectations raised when FAMS was moved to ICE have not come to fruition. The surge capability that has been developed, and not exercised very often, could just as easily be managed elsewhere. The GS-1811 conversion has not occurred and there is no imminent prospect for ground-based law enforcement assignments for FAMS within ICE. Finally, FAMS is still administratively a component of TSA. Returning FAMS to TSA could simplify the management of ICE and move FAMS closer to its airline security mission.

Forensic Document Laboratory

We suggest aligning the FDL with CBP. In the course of enforcing immigration and customs laws, inspectors and investigators encounter fraudulent documents. INS' FDL was considered a premier international authority on the subject of fraudulent travel documents. Comprised largely of former inspectors with years of experience in examining documents, it

serviced INS inspectors and investigators with forensic examination of travel documents and training. In the past, inspectors, Border Patrol agents and others in INS would forward seized documents to the FDL for examination. FDL officials said that 90 percent of the information that they used to develop their intelligence products and employ in their forensic work came from the inspectors. Likewise, most of the FDL's support was provided to inspectors. The FDL was transferred to ICE during the re-organization that created ICE and CBP.

In 2004, FDL officials, acknowledging the findings by the National Commission on Terrorist Attacks Upon the United States (9/11 Commission) that identified shortcomings in travel document analysis, submitted plans to ICE management to create a trend analysis capability within FDL. ICE took no action on FDL's proposals. In late 2004 and early 2005, CBP, recognizing the same deficiency, initiated steps to create a trend analysis capability within CBP. The entity CBP created is called the Fraudulent Document Analysis Unit (FDAU). During the initial planning for the FDAU, CBP officials began developing procedures with FDL officials to coordinate operations and to ensure a seamless process for examining and analyzing fraudulent documents between the two organizations. Further development stalled when these plans were presented to ICE management. ICE management wanted to develop a formal MOU and to negotiate the transfer of staff and funds from CBP to ICE to support the effort. FDAU and FDL officials realized that developing a MOU would be a time consuming, if not futile, effort and decided that the two organizations would work together informally. Interestingly, in a letter from ICE to Congress, dated May 10, 2005, concerning enhancing FDL's expertise to combat the illegal use and proliferation of fraudulent documents, ICE identified the need for a trend analysis capability within FDL. The letter made no mention of CBP's FDAU and no action has been taken to establish a trend analysis capability within FDL.

ICE officials contend that ICE is FDL's biggest customer. They cite completed forensic examination referrals as evidence. During the period August 1, 2004 through July 31, 2005, FDL completed a total of 4,092 forensic examination services. Of these, 2,238 were completed for ICE and 481 were completed for CBP. These numbers only tell part of the story. First, some of the forensic examination referrals presented by ICE to the FDL originated as a result of documents seized by CBP inspectors and by CIS officers. Second, much of the support provided by FDL is through the Image Storage and Retrieval System (ISRS). ISRS is a database of travel documents that have been used in the past by aliens to legally enter the United States. In the past, when inspectors interviewed aliens at POEs that presented suspected fraudulent documents, the inspectors would contact the FDL via telephone to

verify the authenticity of the travel documents. The FDL would query the ISRS database to determine if the documents had been presented before and whether they were fraudulent. This type of contact between FDL and the POEs was constant and frequent. However, in the last 12-24 months, ISRS workstations have been deployed to most of the POEs. This enables the inspectors to query ISRS directly without involving FDL staff, making the query process more efficient. Now, the ISRS queries are transparent to the FDL. These queries statistics are not captured so the daily support that FDL provides to the CBP inspectors is understated.

The FDL's ability to continue to provide expert service is likely to decline. Much of FDL's success is due to its recruitment of veteran inspectors with extensive experience in identifying fraudulent documents. However, ICE has changed the FDL's hiring policy, requiring that the FDL hire only investigators or intelligence analysts. Absent a change in recruiting practices to allow the FDL to hire former inspectors, its ability to continue to provide expert forensic service is likely to erode.

FDL and FDAU provide complementary examination and analysis of fraudulent documents. In light of the 9/11 Commission report findings, it is illogical and ill advised to permit these two organizations to operate separately. A far better solution is for both entities to be managed within one organization. Because much of the daily operational support is provided to CBP, FDL and FDAU should reside in CBP. Absent locating the two in one organization, physical collocation is an alternative solution.

Organizational Options

According to the announcement issued by DHS on January 30, 2003, the current organizational structures were supposed to:

“...enable Department leadership to establish coherent policies for the incoming agencies and ... provide the opportunity to reduce duplication of efforts and ... ensure improved information-sharing.”⁸⁹

Our review suggests that the organizational structure has not accomplished the goals set forth in DHS' announcement. Clear policies are still needed and coordination of functions has not been achieved; duplication of effort has not been eliminated, and redundant capabilities are being developed by CBP; and

⁸⁹ DHS, “Border Reorganization Fact Sheet,” January 30, 2003.

information and intelligence sharing is not as effective as it could be due to the formation of informational stovepipes.

It is difficult to quantify the extent to which the border security mission has been impacted as a result of the current organizational structure. Reliable quantitative data is not available to support this type of analysis in all areas. Furthermore, because the DHS organization is recent, in many cases there is insufficient data on the performance of the new organizations to compare against past performance statistics.

Most of the issues that we discussed were based on anecdotal and testimonial evidence. However, it bears repeating that we spoke to senior officials, field supervisors, and field employees from all major skills, operations, and headquarters and field offices within BTS, on the border and inland, and the employee unions representing CBP and ICE employees. We conclude that the preponderance of the information, the breadth of sources of the information, the common themes across the country and across organizations, and the emotion with which it was communicated are compelling. We found confusion or disagreement about mission, conflict about agency relations and authorities, and institutional insularity, redundancy, and stovepiping that require corrective action.

Contributing to the frustration is the perception on the part of CBP and ICE field employees that the two organizations lack clear missions and vision. While CBP and ICE management have attempted to quell field employees' concerns by equalizing pay inequities between the INS and USCS investigators in ICE, for example, they have not made much progress building strong corporate cultures. Based on what we were told by employees throughout the BTS, CBP and ICE, we believe that the present organizational structure has not accomplished what it was tasked to do when it was established on January 30, 2003.

A number of organizational alternatives to the current structure have been proposed. One option would be to eliminate BTS and have CBP and ICE report directly to the DHS Deputy Secretary. In another option, DHS could create more effective mechanisms to coordinate CBP and ICE functions by strengthening BTS and crafting more effective MOUs. Finally, DHS could merge CBP and ICE into one border security agency. We will discuss these options below. We also will discuss possible changes in the organizational alignments of FPS, FAMS, and FDL.

Option 1: Customs and Border Protection and Immigration and Customs Enforcement Report to the Deputy Secretary

One option for reorganizing CBP and ICE is the elimination of BTS, with CBP and ICE reporting directly to the DHS Deputy Secretary. This option would transfer the responsibility for management of CBP and ICE from the BTS Under Secretary to the DHS Deputy Secretary. While it would eliminate the BTS middle management layer, this option would not address the issues that we identified as stemming from the separation of customs and immigration enforcement functions.

Reorganization along these lines would not address the primary source of many of CBP's and ICE's problems – the separation of the functions of the two agencies. This option does not account for the fact that the current organizational structures of CBP and ICE are the source of many of the coordination problems and the crescendo of frustration emanating from their employees during our interviews. Nor would this option restore the customs and immigration enforcement continuums with their interconnected and interdependent functions. A direct reporting of the two agencies to the Deputy Secretary would not resolve the coordination problems between CBP's apprehension function and ICE's detention function, or CBP's inspections function and ICE's investigations function; and it would not improve coordination of intelligence activities between CBP and ICE.

In addition, with the integrator function further removed from the two agencies' day-to-day operations, coordination of CBP's and ICE's functions would not improve. The programs would compete with other DHS programs for the time and attention of the Deputy Secretary. The Deputy Secretary already has a host of responsibilities with twenty-plus other DHS organizations reporting to him along with the "robust dotted line" authority over financial management, procurement, and other services. These include the Directorates of Management, Information Analysis and Infrastructure Protection, Science and Technology; and other agencies with significant missions and resources such as CIS, USSS, and USCG. This reporting scheme may make CBP and ICE coordination more difficult.

Option 2: Create More Effective Coordination Mechanisms

Strengthen BTS to Better Integrate Customs and Border Protection and Immigration with Customs Enforcement Functions

Providing BTS clear budget formulation and execution authority over CBP and ICE would strengthen one of the significant deficiencies in the organization. This would help enable BTS to compel coordination of missions, priorities, and resources between the two organizations.

If BTS is to manage CBP and ICE, it requires more staff. Additional staff is needed to provide long-term attention to program evolution and resources, to coordinate interdependent functions and relationships among subordinate organizations and with outside agencies, to arbitrate disputes and enforce the resultant decisions, to develop and implement new policy, and to impose accountability. The likely sources for such staffs are managers and personnel from CBP and ICE. Moving senior CBP and ICE managers and staff from their respective organizations and placing them in BTS would create some unnecessary duplications with the current management structures of CBP and ICE.

Logically, BTS' capability would also be strengthened if its Under Secretary could affect the selection, promotion, and performance awards of the program managers upon which integration depends. The provision of this authority to the BTS Under Secretary, however, would conflict with and dilute that of the respective heads of ICE and CBP.

Giving BTS the additional authorities, increasing the size of its staff, and reducing the autonomy of CBP and ICE leadership in a sense creates a merger of CBP and ICE under BTS. However, this option would still leave the institutional barrier between CBP and ICE in place and facilitate the persistence of operational and information stovepipes. We view this course of action as less than an ideal solution.

Develop More Effective Memorandums of Understanding

We heard some suggestions from CBP and ICE managers that the current situation could be corrected with more and stronger MOUs. Other CBP and ICE managers view MOUs not as a solution, but as symptomatic of the problem. That is, they believe CBP and ICE are unable to cooperate and coordinate effectively because of the gaps that separate them and require formal treaties to govern their efforts.

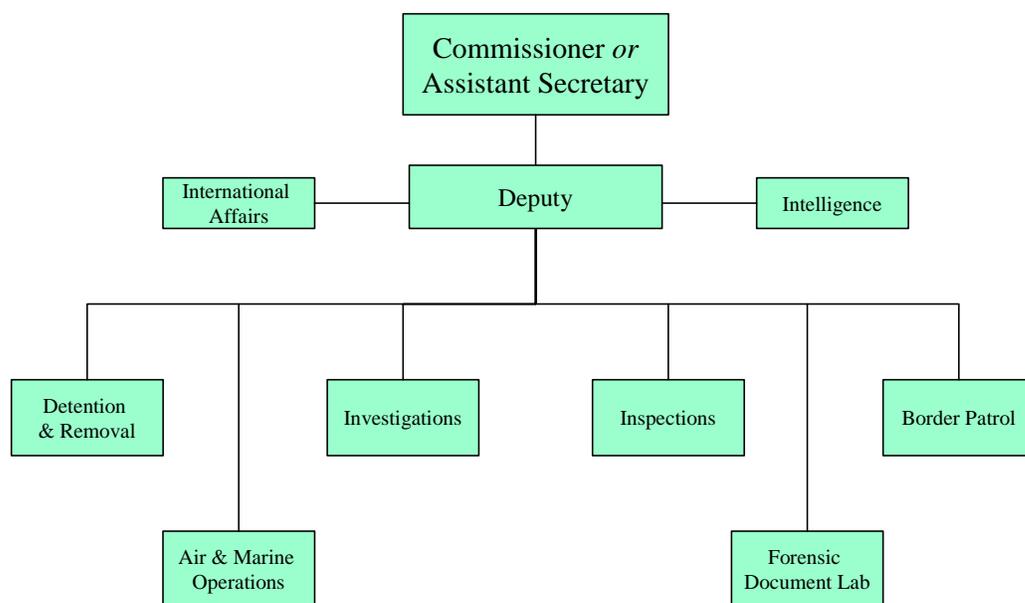
MOUs are time consuming to negotiate and rarely all-inclusive. MOUs generally lack the specificity needed to provide the real guidance that is needed on a day-to-day basis. They need to be, but rarely are, reviewed periodically and updated to reflect the changing operational environment. In addition, MOUs must be enforced and disputes arising under them must be adjudicated. We previously reported that the lone MOU that does exist has not corrected the problems that it was intended to resolve; we are not optimistic that MOUs can address the dysfunctions we identified.

Option 3: Merge Customs and Border Protection / Immigration and Customs Enforcement

In our judgment, the optimal solution is to remove the institutional barrier between CBP and ICE, and consolidate the customs and immigration enforcement functions into a single border security agency. The almost universal message we heard from inspectors, Border Patrol agents, investigators, and DRO officers is that they perceive the current problems between CBP and ICE to be unresolvable under the current structure. They view the current structure as an “unnatural separation” of the interdependent functions that were once part of the immigration and customs enforcement continuums.

Integration efforts like “One Face at the Border” were implemented to set the stage for coordination and the elimination of stovepipes. As such, they represent steps toward a more cohesive border enforcement environment. By contrast, difficulties at the various “touch points” between CBP and ICE – apprehension and detention and removal, interdiction and investigation, and intelligence – present barriers to more seamless border enforcement. Merging these functions would preserve the powerful law enforcement tools originally envisioned for ICE and eliminate the source of friction between the two organizations. A merged organization, with a single chain of command, would coordinate missions, priorities, and resources to ensure a comprehensive border security program.

Proposed Organization for Border Security Agency



If CBP and ICE are integrated and merged into one organization, BTS is not needed. The role of integrator, adjudicator, and enforcer shifts to the new border security agency head. Other organizations currently under BTS management would require realignment. FLETC, the organization responsible for training employees of the new border security agency would logically be aligned with it. US-VISIT, the program that manages the entry and exit of foreign visitors to the United States and which has a strong nexus to the inspections function, would also logically be aligned with the new border security agency. The placement of TSA is less clear. It could be aligned under DHS, reporting to the Deputy Secretary. In light of the disposition of the remaining elements, BTS could be eliminated.

We recognize that a merger will have associated financial and human costs. However, consideration must also be given to the potential costs of maintaining the status quo. During a January 2005 Homeland Security and Governmental Affairs Committee hearing, Senator Susan M. Collins compared DHS to a road under construction. She said that DHS was established without mapping out a precise route leading to an organization that was “sufficient, effective, and durable to protect” the United States. The Senator specifically mentioned concerns about the efficacy of the current CBP and ICE structures. Further, she said now was the time to assess DHS’ performance and make changes where needed. Indeed, several significant

changes have already been made to BTS' structure. AMO was transferred to CBP from ICE and ODP was transferred from BTS to the Office of State and Local Government Coordination and Preparedness. These structural changes indicate an acknowledgement by DHS leadership that the initial structure of the organization may not have been optimal and that changes should be made when appropriate.

Within the ranks of CBP and ICE, many legacy employees still maintain good relationships with their peers from their former organizations, INS and USCS. Those experienced inspectors, Border Patrol agents, and investigators attempt to overcome the organizational divide in order to secure the border. Their efforts have been described by some employees as the primary means of coordination between the organizations. However, under the current structure, many of these legacy employees are opting for early retirement or separation. Their beneficial relationships and expertise will be lost in their absence. DHS has a small window of opportunity to merge the organizations while these legacy employees' expertise and good will can ease the difficulty of the transition. We encourage DHS to consolidate CBP and ICE in the near future while the legacy employees are available to facilitate the change.

Other Suggested Organizational Changes

FAMS and FPS should not be included in the new border security agency. We believe that these organizations would be better served if they were aligned with organizations with more similar missions. The logical realignment for FAMS is with TSA where both organizations have a domestic airline security mission. FPS could be aligned with a broader physical security mission within DHS, such as the Office of Security or the Uniformed Division of the USSS, or perhaps with another department that has similar protective functions such as the U.S. Marshals Service. Or, it could be returned to GSA. Finally, no matter what decision is made regarding reorganizing the CBP-ICE structure, we suggest the realignment of FDL with CBP.

Recommendations for DHS Second Stage Review Implementation

Our review effort identified a number of important concerns in the relationship of CBP and ICE that we believe are linked to the current organizational structure. We judged that the current organizational structure was fostering an environment characterized by conditions DHS was forged to

eliminate, namely: duplication and redundancy, poor coordination, and limited information sharing. We concluded that the best means to address the issues described in our report was to merge CBP and ICE.

DHS has elected, however, not to merge the two entities. While we were conducting our review, the Secretary initiated a review (2SR) of DHS operations and structure. On July 13, 2005, after conducting a review of the operational and organizational aspects of the Department, the Secretary made the considered decision not to merge ICE and CBP. Instead, he placed them in a direct reporting relationship to the Deputy Secretary.

In light of the Secretary's decision, we make several recommendations for implementation within the 2SR framework to help address the issues we identified. DHS leadership should anticipate the extensive nurturing requirement associated with these fairly new agencies and expect to devote significant hands-on attention to their management and coordination needs. ICE and CBP operations will require intensive monitoring and senior management will have to be available to address unanticipated issues requiring immediate attention.

Without BTS to coordinate and integrate CBP and ICE functions, DHS must intensify its attention and commitment to address interagency concerns between CBP and ICE. Under the 2SR arrangement, this effort will require considerably more time and attention from senior leadership, and increased staffing and resourcing of coordinating bodies.

The Secretary and Deputy Secretary's staff, and the new Policy and Operations Coordination Units will require significantly more staff expert in CBP and ICE operations to manage coordination between CBP and ICE than were present in BTS. These additional staff should not simply be detailed from CBP and ICE, but should instead be drawn from newly created positions.

The success of the 2SR alignment will hinge in large part on the resulting organizations' ability to craft solutions to CBP and ICE issues in the following areas:

- Defining and communicating roles and responsibilities
- Planning and budgeting
- Setting and enforcing priorities
- Maintaining control, monitoring and arbitrating disputes
- Sharing information

To address concerns in these areas, we recommend that the Deputy Secretary:

1. Establish that the Under Secretary for Policy and the Director of Operations Coordination have authority over CBP and ICE with respect to policy and operational coordination. These offices' purview must be re-enforced by the Secretary and Deputy Secretary's actions. Accordingly, it will be essential for the Secretary and Deputy Secretary to channel related discussions and decisions with CBP and ICE through these offices.
2. Develop a vision of how ICE and CBP are to work together and contribute to the overall DHS mission. Consistent with this vision, the Operations Coordination Office and Under Secretary for Policy should work with CBP and ICE to define and set their respective roles and responsibilities. At minimum, clarification needs to be provided in the following areas:
 - ICE's role at POEs and the establishment of its jurisdictional authorities in consideration of CBP authorities.
 - CBP's role in referring case leads to ICE; ICE's role in responding to case referrals from CBP.
 - ICE DRO's transportation and CBP support roles.
3. Communicate roles and responsibilities to all levels of CBP and ICE so that they are understood throughout the organizations. It is paramount that CBP and ICE employees understand their individual and institutional roles and responsibilities and the relationship of these to the roles and responsibilities of those of the other agency.
4. Monitor CBP and ICE field performance to ensure adherence to DHS' vision and guidance, and accountability to related goals,. To support this accountability, DHS leadership should develop performance measures and a reporting mechanism that convey an accurate picture of current operations to senior managers. In addition to performance metrics to measure internal CBP and ICE operations, a set of joint performance metrics should be developed to gauge the extent of interaction and coordination between CBP and ICE, as well as the

level of support each organization extends the other.⁹⁰ Resulting metrics should assist the organizations in arriving at shared expectations about their respective obligations and level of support.

5. Develop a formal mechanism to assure that the Under Secretary for Management and the CFO collaborate with ICE and CBP management to develop a process for CBP and ICE to increase participation in one another's budget formulation and strategic planning processes. This budgeting and planning interaction should include avenues for CBP and ICE to comment on and influence one another's budgets and strategic plans. These efforts should be pursued with the aim of achieving an effective balance of resources and ensuring adequate support for major operational initiatives across institutional boundaries. In addition, the CFO should track budget execution to guarantee compliance with agreed-to budget and plans.
6. Direct the Operations Coordination Office to undertake an interagency procedural review process to ensure that ICE and CBP procedures support agreed upon roles and responsibilities and are compatible with one another at touch points. Where necessary procedures do not exist, the Operations Coordination Office should direct development of needed procedures, and notification and information exchange protocols.
7. Ensure that the Operations Coordination Office closely monitors the development of redundant capabilities within CBP and ICE as indications that resource sharing arrangements are not proceeding smoothly. Attention should be given to:
 - CBP's plans to expand the number of enforcement officers and enlarge their jurisdiction.
 - CBP's use of Border Patrol agents in an investigative capacity.
 - CBP's fraudulent document analysis capability.
 - CBP's expanding intelligence apparatus.
8. Require that the Policy Office engage in coordination with CBP and ICE to align priorities with an interagency bearing (e.g., detention bed

⁹⁰ One such performance measure could, for example, reflect the average number of beds allocated to aliens apprehended by CBP per day.

space, investigative case selection) through a consultative process. Pursuant to this process, the Policy Office should monitor implementation of these priorities through performance tracking and periodic interagency reviews including assessments of related resource deployments.

9. Establish a forum for coordinating among staff from the Secretary and Deputy Secretary's Office, Under Secretary for Management, CFO, Under Secretary for Policy, Director of Operations Coordination, CBP Commissioner, and ICE Assistant Secretary to discuss issues related to the ICE-CBP relationship.
10. Create joint CBP-ICE bodies to oversee the implementation of interagency coordination efforts and MOUs. These bodies could respond to requests to deviate from plans, make adjustments, provide clarification, and resolve different interpretations of related guidance.
11. Develop a headquarters-level joint CBP-ICE standing committee to manage the relationship between the two. This committee could address a revolving agenda on CBP-ICE touch points and develop interagency policies and procedures to guide CBP and ICE operations. The committee should document and distribute information on dispute scenarios and resolutions to help foster greater uniformity in interpreting policies and procedures and resolving related disputes. To resolve disputes at both the headquarters and field levels, CBP and ICE should create a strictly proscribed time standard for disposition, as the dynamic nature of the enforcement environment requires swift decisions to accomplish the mission.
12. Develop dispute arbitration and resolution mechanisms at the field-level. These mechanisms should be available for airing both routine and extraordinary interagency operational concerns and recommending remedial actions, and they should be designed to minimize the risk of retaliation against employees who raise concerns. When the resulting field-level arbitration mechanisms result in the resolution of a dispute, headquarters should be notified of the issue and resolution.
13. Develop an operating environment that facilitates collaborative intelligence activities. Such an environment should promote ICE-CBP staff co-location when possible and where appropriate. In addition, CBP and ICE should pursue the development of joint intelligence products to reflect a more comprehensive picture of border security. Finally, CBP and ICE should jointly employ new technology systems

for the exchange and analysis of intelligence information that facilitate these activities.

14. Address the prevalent and growing contentiousness between CBP and ICE. Competition is natural between two groups, but ICE and CBP leadership should develop programs and policies to encourage mutual respect. Field level activities must be monitored more closely to ensure that border security is not compromised by organizational antagonisms mentality. Likewise, DHS leadership should take action to develop a corporate culture in which all CBP and ICE employees believe that they have a vested stake in each other's mission and in the overall DHS mission.

Management Comments and OIG Analysis

Overview of Management Comments

In its comments on this report, DHS management agreed with a number of important aspects of the report, while disagreeing with its principal conclusion and a number of supporting facts. DHS management agreed that there have been difficulties in the relationship between ICE and CBP in the areas that we identified, but took a different view on how to address some of those difficulties. The Department expressed concern for a protracted period of organizational churn that may result from a merger, but does not address how it outweighs the organizational churn we encountered in our fieldwork or the underlying merits of a merger as a solution.

In the main, DHS management agreed that there have been significant issues in the relationship between CBP and ICE in the areas we discussed – coordination of apprehension and detention and removal operations, coordination of investigative operations, and coordination of intelligence activities. In his comments on this report, the Deputy Secretary wrote that DHS management “basically concur[s]” with our assessment of the need for improved coordination regarding the apprehension, detention, and removal of illegal aliens. Furthermore, even where they raised questions about our discussion of coordination between CBP and ICE, the Department’s detailed comments on the report expressed an interest in improving coordination in this area.

In his letter, the Deputy Secretary also indicates that DHS management shares our concerns on the issues regarding coordination between CBP and ICE in investigative operations and intelligence sharing. In its detailed comments, however, the Department took issue with a number of our supporting facts in these areas. Its comments on these issues place particular emphasis on questioning the data we present. We address DHS’ comments in this regard in the more detailed discussion in the following pages. In response to our discussion of potential remedies to challenges in the CBP-ICE relationship, the Department provided a similarly mixed response. DHS management pursued some of the structural remedies we endorsed, while determining not to proceed with others.

In moves that coincide with our suggestions, the Secretary decided to seek the elimination of BTS and transfer FAMS to TSA. Nonetheless, DHS management determined not to move forward with other structural changes we suggested. After conducting a Second Stage Review (2SR) of the

Department's operations, the Secretary selected a reorganization plan that maintains ICE and CBP as separate entities with a direct reporting relationship to the Deputy Secretary. The Department believes that this change, in addition to other adjustments included in the Secretary's 2SR plans, represent "management solutions that will strengthen CBP and ICE coordination." An examination of the Department's detailed comments on the report suggests that the Secretary will depend on the following to improve coordination between CBP and ICE:

- Improved budgeting practices with respect to DRO that account for and include the monitoring of trends in CBP apprehensions.
- Creation of various working groups at the departmental and field levels.
- Formation of an Operational Coordination Office at the departmental level.
- Formation of a discrete Office of Intelligence and Analysis at the departmental level.

Because all of the details surrounding 2SR plans have yet to emerge and because operational relationships in this new organizational arrangement have not yet been clearly fixed, we are unable to evaluate whether it will strengthen CBP and ICE coordination as intended.

In his letter, the Deputy Secretary described our report as "tainted by factual errors." We disagree with this assertion. First, in the body of the report, as much as in the following pages, we address all of the Department's points of disagreement on matters of fact. Where appropriate, we have made changes to the report in response to the Department's observations. We do not believe these changes represent errors that would affect our conclusions, but they were edits requested by the Department that we concluded we could or should accommodate. In many other cases, however, the Department's concerns on points of fact were without merit, and we have indicated the basis for our conclusions to this effect.

Second, the Deputy Secretary asserted that our report lacked "analytical rigor." This review effort was of extraordinary scale and executed in a thoroughly professional manner. We enlisted substantial staff in our review and executed associated obligations in a manner that cannot be fairly characterized as lax. Thirty-five OIG staff participated in this review and

devoted thousands of hours work to the product. Our analysis is the product of hundreds of interviews with DHS senior managers and experienced employees in positions of considerable responsibility, as well as outside observers. Virtually all of the Department's senior staff in BTS, CBP and ICE were interviewed. Many, if not most, concurred with our core conclusions.

Given the rarity of available and reliable data relevant to assessing the effectiveness of an organizational structure, fact gathering by interview is an accepted methodology and was necessary in this case. Our interviews were not to test employee morale, although evidence of poor morale was so great as to require reporting. Our interviews were to assess integration and operational problems and their causes. Isolation of a causal element was key in this process, and the interviews sought to filter out independent variables, e.g., problems that existed within INS or USCS long before there was a DHS, and problems related to ICE's budget shortfalls, which must be fixed irrespective of whether or not ICE is merged with CBP or stands alone. Lastly, our interviews sought concrete examples rather than general impressions so that we could illustrate for the reader how the problems played out. There are challenges in this methodology, which is why we clearly described our approach for the reader to assess. But when we refer to the results as "anecdotal," we do not intend to suggest a lack of rigor in the approach or lack of confidence in the results.

Our confidence in the rigor of this review is based on the extensive effort to obtain the experiences of the full spectrum of DHS employees involved in the ICE, CBP, and BTS organizations. It is also based on the objectivity of the OIG personnel who conducted the review and extracted from it the premises and observations that went into our report. They had no vested interest in the outcome. Their assignment was to answer the question, "should ICE and CBP be merged?" and to explain why. The assignment did not permit equivocation and anything less than a direct answer would have been a disservice, in our view. Finally, even if one differs regarding the conclusion, we would hope that our report would nonetheless provide useful and insightful information as DHS moves forward.

DHS complains that the report is "deficient in its discussion of the positive steps that ICE, CBP, and BTS have undertaken over the past several years." There are several responses. First, our report did discuss some of these initiatives: for example, we strongly support the principles behind the One Face at the Border initiative and cited it in the report as an effort to *attack* stovepiping. Second, while the Department counted as initiatives some of the policies and procedures it has installed, there were deficiencies in their implementation and our focus was on the incompleteness of integration rather

than the good intentions of the initiative. Similarly, the Department cites MOUs as coordinative initiatives, which they are. However, we reported on the evidence we heard suggesting that they are imperfect solutions to the integration problems we studied, and believe that was the more important perspective to convey here. Lastly, the Department discussed a number of initiatives in its response that did not exist or were unimplemented initiatives at the time of our fieldwork. Not surprisingly, we did not discuss them.

In the following pages, we address DHS management's comments on this report in detail. We have divided our discussion of DHS comments along thematic lines, evaluating the Department's comments on the following topics discussed in the report:

- Customs and Immigration Continuums
- Coordination of Apprehension and Detention & Removal Operations
- Coordination of Investigative Operations
- Coordination of Intelligence Activities
- The Role of the Border and Transportation Security Directorate
- Federal Protective Service
- Forensic Document Laboratory

Detailed Analysis of Management Comments

Customs and Immigration Continuums

DHS asserts that our depictions of the customs and immigration continuums are inaccurate. DHS does not understand what our depictions represent. That is, prior to the establishment of DHS, one agency was responsible for enforcing all customs laws. Another agency was responsible for enforcing all immigration laws. When DHS was established, responsibility for the enforcement of customs and immigration laws was split between two organizations. The split created an artificial barrier to coordination, cooperation, and communication, which we describe throughout our report.

We agree with DHS' assertion that the HSA was intended to remove barriers. However, it was the subsequent management decisions leading to the creation of CBP and ICE that forged the barriers we discuss.

Coordination of Apprehension and Detention and Removal Operations

In its comments on this aspect of our report, DHS management concedes that "improvements must be made in this area," but suggests that we have overstated related concerns and underreported the level of coordination that has taken place between CBP and DRO. We made few changes to our report in response to DHS comments in this area.

In its comments, DHS management suggests that increases in the numbers of illegal aliens DRO detained and removed in FY 2003 and FY 2004 are reflective of improved coordination between ICE and CBP. On the contrary, the growth in the number of aliens detained and removed during these years is attributable to changes that were not tied to the relationship of ICE and CBP. In particular, DRO's increased use of detention space above funded levels and shortened detention stays over the period better account for the growth in these figures. Although it received no additional funding to add detention space, DRO increased its average *daily* population by 1,280 in FY 2003, and 896 in FY 2004. Meanwhile, average and median lengths of stay for detained aliens declined between FY 2002 and FY 2003. As a result, DRO detained 29,577 more aliens in FY 2003 than in FY 2002; and 3,817 more aliens in FY 2004 than in FY 2003. These two factors coupled with improvements in EOIR's removal case processing contributed to a rise in the number of removals because, as we discuss in the body of the report, detained aliens are much more likely to be removed than non-detained aliens. This view is also supported by the fact that when DRO reined in its use of bed space at the start of FY 2005 to align with available funds, removals dropped significantly.

Furthermore, DHS management's comments omit less favorable data from FY 2005. Fiscal Year 2005 removal numbers are down significantly from their FY 2004 levels. Through the first 11 months of the fiscal year, total removals were down 19 percent from the same period in FY 2004. Non-criminal removals, a disproportionately large share of which stem from CBP apprehensions, fell even more markedly over the period. Through August 2005, DRO had removed 30 percent fewer non-criminal aliens than it had in FY 2004 through August 2004.

More importantly, it was never our contention that detention and removal numbers declined after CBP and ICE were created. Instead, this report asserts that DRO had not received adequate resources to address burgeoning

apprehensions on the part of CBP; that due in part to poor coordination, demand for detention space has increasingly outstripped supply. This is plainly apparent to those who have studied trends in DRO's absconder backlog. The absconder population is chiefly composed of aliens who, after they are apprehended initially, are released pending a removal hearing but fail to appear for the hearing. Because the bulk of aliens apprehended by CBP are not mandatory detainees, they are frequently released pending their removal hearing. Many of these, in turn, abscond. Because CBP experienced a rapid rise in the number of OTMs it apprehended, and because a parallel number of additional DRO detention beds were not available to accommodate them, the absconder backlog has ballooned. In other words, due to resource constraints, DRO has not been able to keep pace with CBP apprehensions. As shown below, the already imposing number of absconders rose dramatically in the first nine months of FY 2005.

Estimated Absconder Backlog		
Date	Total Number of Absconders	Change Over Period
Sept. 30, 2001	331,734	-
Sept. 30, 2002	376,003	44,269
Sept. 30, 2003	418,753	42,750
Sept. 30, 2004	465,353	46,600
June 30, 2005	536,644	71,291

It is also worth emphasizing that we do not contend that the imbalance between CBP's front-end apprehension capabilities and ICE's downstream detention and removal capability is solely the product of poor coordination. Indeed, resource imbalances in this area pre-date DHS. Our assertion is simply that, coupled with ICE's funding and accounting difficulties, shortcomings in the interagency planning and budgeting processes contributed to imbalances, leaving CBP less able to accomplish its mission objectives.

With respect to the question of rectifying the resource imbalance between CBP and DRO, DHS management states that "in working to fix ICE financial challenges this year, DHS implemented plans ... to ensure that ICE has the capacity to adequately detain and process illegal aliens apprehended by CBP." When we conducted our fieldwork, however, effective planning and budgeting processes were not in place to ensure that resource needs were met

across the border enforcement continuum or that resources were allocated appropriately. Moreover, through our work on another review focusing on the detention and removal of illegal aliens, we have determined that DRO is still not resourced adequately to meet its future detention obligations and support planned alien apprehension and removal initiatives.

In its detailed comments, DHS management asserts that this report neglects to mention coordinative efforts between CBP and DRO. On the contrary, our report notes that CBP and DRO communicate through interagency liaison staff and participate in joint working groups at the agency level.⁹¹ We also stated that “productive operational coordination between DRO and CBP occurs in several localities,” and specifically mentioned that cooperative efforts have arisen in Arizona. In addition, we said that overall coordination between the two organizations on the Border Patrol’s use of Expedited Removal has been described as positive.

A number of other coordinative efforts the Department would have liked us to highlight are either still in the planning stages or occurred after we completed our fieldwork. Operation Texas Hold ‘Em, a notable coordinative effort to target the removal of a “rising tide” of Brazilian illegal immigrants along one stretch of the border, did not go into effect until July 2005, after we completed our fieldwork for this review and was not raised in discussions with DRO representatives in the area when we spoke with them a little more than a month earlier. DRO’s capacity planning program, which is to incorporate CBP, is described in the future tense. Meanwhile, plans to form local working groups at all of DRO’s 23 Field Offices to address coordination issues only materialized in July 2005 and, as of September, had not been associated with a formal structure or timeline for implementation. The establishment of a working group for every Field Office would appear to confirm our observation that the present organization has not accomplished the integration needed. Working groups can achieve some change, but in general they are often transitory, dependent on consensus, and lacking in implementation authority.

Finally, the Department’s laudable efforts to develop a resource plan that identifies the coordinated capabilities, operational workflow, and resource needs of both components, have only just been initiated, according to its comments on this report.

⁹¹ As the Department’s comments suggest, since we concluded our fieldwork, an OIG representative has participated in a working group to examine ways of enhancing the alien removal process.

DHS also takes issue with our text that read, “According to CBP, the level and quality of support [it received from DRO] declined.” DHS management asserts that this is not the position of CBP, but rather that of a CBP employee. We have amended our report to reflect CBP’s declared position to the contrary. It is worth noting, however, that the reported position was that of a number of senior CBP staff, including one who has frequently represented the organization before Congress.

In addition, DHS commented that “DRO was never ‘subordinate’ to inspections (CBP OFO) or Border Patrol.” Under the INS’ regional and district management structure, however, DRO resources were often redirected to support the missions of inspections and Border Patrol units. We have adjusted our language to better comport with this intended meaning.

We are heartened by the Secretary’s attentiveness to the fact that the immigration enforcement efforts of ICE and CBP represent parts of a shared continuum and DHS’ awareness that “planning to increase apprehensions necessarily must include planning to increase detention capacity and removal resources.” We trust that this recognition will translate into more effective border enforcement planning. We are also pleased with the Department’s statement that it “is actively thinking through ways to enhance coordination” in this area and encourage the Department to follow through on related plans. We are likewise encouraged by DRO’s planned coordination efforts at the field level and would like to see these plans implemented.

Coordination of Investigative Operations

In its comments, the Department disputes many of the report’s assertions regarding the lack of coordination between CBP inspectors, Border Patrol agents, and ICE investigators. Department management claims that the new organizational structure did not change the interdependency between inspectors, Border Patrol agents, and investigators or the case referral process. Additionally, DHS’ comments dispute our findings that ICE no longer accepts and that CBP no longer makes as many referrals, citing DHS’ variant interpretation of the data. That CBP would create its own investigative services to fill a perceived void or would more frequently refer cases to other investigative agencies is also denied. DHS management relies on a strikingly different interpretation of data to rebut our assertions. In addition, DHS supports its denial of degradation in coordination by maintaining that the former policy between investigators and inspectors has not changed, or that reported incidents of poor cooperation do not comply with the organizations’ policies. It argues that the anecdotal opinions of some employees do not indicate a downward trend. Any problems that do exist will be resolved by

working groups and the Secretary's reorganization of the Department. Finally, the Department is critical of this report for not commemorating successful, coordinated efforts between the two groups.

The Department's rejection of the problems in investigative coordination that we described is ill founded. We feel confident in our findings of poor coordination between inspectors and investigators in that we not only encountered a notable consistency in our interviews with CBP and ICE employees, but during the course of our review, senior CBP and ICE management dedicated three days to addressing the same problems.

In March 2005, as we were conducting the fieldwork in our review, ICE and CBP senior managers convened a three-day working group to address issues in coordination of field activities and intelligence and information sharing. A slide show presentation to the group included as the working group's purpose to "improve coordination mechanisms for our most common interactions; develop plans for more effective communication and enhance cooperation."⁹² "Primary Issues" to discuss included criminal violations at the POEs, Information and Intelligence Sharing, Coordination Efforts, and Deconfliction of Investigations. Some of the "Secondary Issues" were "CBP-ICE Major Policy Changes," and "Federal Inspection Site Access." According to a senior ICE manager's summary of the meeting's discussions, comments regarding the issues included:

- CBP's referral of leads to other agencies, such as local law enforcement and the FBI when ICE refused CBP referrals, which could result in duplicative investigations.
- CBP's expanded investigative duties in the JTTFs, which ICE complained resulted in compartmentalization of information and lack of coordination.
- CBP's removal of personnel from the ICE ICATS and creating other intelligence/information programs, which are not coordinated or shared with ICATS, and would lead to a potential for duplication of efforts and separation of the groups.
- ICE's concerns with the extent to which CBP did not share other information that would assist ICE investigations.

⁹² U.S. Customs and Border Protection Office of Field Operations/Immigration and Customs Enforcement, Office of Investigations, Working Group Meeting, March 22-24, 2005, received from the Department in response to our request for documents pertaining to ICE's involvement in the working group on CBP enforcement officers.

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- CBP's hesitance to allow controlled deliveries of counterfeit merchandise due to fear of liability should ICE lose the load.
 - ICE's concerns over CBP's handling of TECS lookouts, which could negatively affect ICE's ability to conduct surveillance on its target, thus hampering ICE criminal investigations.
 - CBP Enforcement Officer expansion of duties would deny ICE their "bread and butter" cases that can eventually lead to larger and more complex investigations, hindering ICE's effectiveness.
 - ICE's concerns over more restrictive access to Federal Inspection Sites, the areas where CBP inspectors review people and goods entering the country.⁹³

As to the Department's insistence that the situation has not degraded, that the situation is the same as it was in legacy organizations, the working group meeting summary showed that the among reasons CBP gave for the cited problems in coordination was a change in dynamics from the INS and USCS. That the relationship between inspectors and investigators has changed was a theme we heard throughout our interview process.

The working group resolved to issue additional policy and joint memoranda to the field to improve these problems in coordination.⁹⁴ The working group was unable to find common ground on one issue, but determined it would raise the issue again at a later date. While we applaud DHS' efforts to address problems and resolve them through working groups, we are not confident that more policies and procedures will effectively align and coordinate the efforts of these groups. The MOU between the Border Patrol and ICE investigators has not aligned these organizations into an efficient continuum of enforcement activity. Many of the examples of poor coordination that we cite in this section of the report occurred under the auspices of the MOU. In addition, the meeting highlights the difficulty of coordinating enforcement operations when they are split between two independent organizations, an observation made by many that we spoke with during our fieldwork.

⁹³ Draft Notes on CBP-ICE Working Group Discussion received from the Department in response to our request for documents pertaining to ICE's involvement in the working group on CBP enforcement officers.

⁹⁴ CBP/OFO Working Group, March 24, 2005, received from the Department in response to our request for documents pertaining to ICE's involvement in the working group on CBP enforcement officers.

The Department relies primarily on its interpretation of the investigations-related data to contest our observations. We dispute DHS management's assertions regarding the data we present in this section of the report and have major concerns about the data it has published in its comments. In its comments, DHS management states that we fail "to account for a primary mission" of CBP and ICE by citing "customs-related data without including immigration data." It would have been our clear preference to use both customs and immigration data in our analysis. As we state in the report, however, we were unable to present immigration data because this data is not complete for the first several quarters following ICE's formation. ICE OI staff have repeatedly said that FY 2003 immigration case data is incomplete. DHS' Office of Immigration Statistics has also corroborated this understanding.

Furthermore, our examination of FY 2003 immigration case data revealed disturbing anomalies leading us to question the reliability of information in some important data fields.⁹⁵ In addition, during the course of our review, we were told of complications associated with former INS investigators' FY 2004 transition to TECS for entering case information on investigations into immigration matters, a practice that had not been in place in previous years. We communicated this information to ICE OI staff. Notwithstanding these substantial concerns, ICE OI staff have used the incomplete case data for FY 2003 and data of suspect reliability for the first few quarters of FY 2004, without any indication that they considered their own reservations about the data or our questions about it. By so doing, they skew the picture of ICE OI's level of engagement in cases referred by CBP. Because ICE OI's immigration case statistics are incomplete for FY 2003, combined figures for the number of customs and immigration cases opened in response to a CBP referral are artificially low for this period. Predictably, ICE OI's combined customs and immigration case figures for FY 2004 and FY 2005 appear in a deceptively positive light when compared against incomplete figures for FY 2003.

DHS' figures do not substantiate the claim that OI cases initiated in response to CBP referrals have increased. Instead, they reflect a noteworthy data shortcoming and disturbing disregard for an unpleasant reality.

⁹⁵ For one, ICE OI immigration case figures for FY 2003 contain a number of apparent duplicates. In ICE OI's FY 2003 case initiation data, the number of immigration cases initiated is identical for several case categories for several quarters. For example, all 814 recorded alien absconder investigations in FY 2003 were reportedly initiated in response to ICE OI referrals in the first quarter. According to OI data, exactly the same number (814) of investigations were opened during the first quarter of FY 2003 in response to an ICE OI referral in all of the following other immigration case categories: human trafficking, worksite enforcement, EWI/status violation, compliance enforcement, JTTF, and alien asset forfeiture investigations. It is almost a mathematical certainty that duplication among these case initiation figures reflects a shortcoming in the data rather than operational happenstance.

In addition to our concerns about the immigration data's reliability, however, we reiterate that our conclusion about decreased ICE case activity in response to CBP referrals was supported by numerous accounts by ICE and CBP employees, including senior officials in the organizations. Further, as we discuss below, many of the related issues we discuss have been raised to ICE and CBP leadership and were even the focus of an interagency working group.

DHS management also writes that,

with respect to the customs-related cases, ... there was a gradual decrease in customs-related CBP referrals to ICE OI during the period from the 2nd Qtr of FY2003 through the 1st Qtr of FY2005 of 7%, the *total* number of customs-related referrals from all source types indicates a gradual decrease during the same period of time of 10%. Given that all customs-related referrals decreased, it is not at all surprising that there was a proportionate decrease in CBP referrals to OI.

Unfortunately, these statements reveal a misunderstanding of the data. The customs-case data we present on page 45 of the report shows that in the 1st quarter of FY 2005 ICE opened 798 fewer customs cases in response to CBP referrals than it did during the 2nd quarter of FY 2003. This represents a 28 percent decline in cases, not seven percent. Overall, ICE opened 12 percent, not 10 percent, fewer customs cases in the 1st quarter of FY 2005 than it did during the 2nd quarter of FY 2003. OI customs cases opened in response to CBP referrals thus declined at a rate that was *more than two times* that of all customs cases (28 percent versus 12 percent). Rather than reflecting an overall decline in OI customs cases, the decline in OI cases opened in response to a CBP referral appears to have been the central driving force in the decline in total OI customs cases. This is evidenced by the fact that the decline in the total number of customs cases opened between the 2nd quarter of FY 2003 and 1st quarter of FY 2005 (798 cases) *exactly* matches the decline in the number of OI customs cases opened in response to a CBP referral.

In addition to citing discrepant data analysis to find fault with our conclusions, the Department contends that the split between inspectors and investigators did not change the referral process or the interdependency between the groups; that the relationships remain as they were before the organizational split. However, the March 2005 working group meeting summary addressed many of the issues we described in our report that have resulted from the division of inspectors from investigators. In two sections of the summary about problems with CBP participation in the JTTFs and problems with

referrals the summary reads, “[t]he dynamics have changed from the former agencies.” The summary confirms what we heard in overwhelming unison from the field and from management: there is a new dynamic at work in the relationship between inspectors, Border Patrol agents, and investigators.

In its comments, the Department disputes our finding that ICE investigators’ refusal to respond to referrals has led CBP inspectors and Border Patrol agents to refer cases to other law enforcement agencies, which is new to the agencies. Yet the March 2005 meeting summary indicates that ICE discussed its concern that cases arising from the POEs were being referred to other agencies, such as FBI and local law enforcement. It mentioned that duplication of efforts and conflicts of interest could arise as a result. CBP’s response, according to the summary, was that in the changed dynamics of the new organization CBP is more involved with cases at the POEs. It also stated that if ICE declines a case, CBP would call other agencies to pursue it. Given this, the data, and the consistent complaints we heard in the field, we cannot credit the Department’s position that problems do not exist between ICE and CBP regarding investigative referrals.

Having disputed our finding that the coordination between inspectors, Border Patrol agents, and investigators has declined, the Department concludes that the reasons for such decline, as outlined in the report, are erroneous, as well. With regard to our suggestion that the two-week cross-training course may have left investigators inadequately prepared to accept referrals of cases relatively unfamiliar to them, the Department argues that 97 percent of the investigative staff have received cross-training. Our contention is that the training is inadequate, not that inadequate numbers of investigators have been trained. That the legacy INS and USCS investigators have been teamed together in different investigative groups, we acknowledge, but we conclude that the new groupings have not been effective. The Department also states that we did not acknowledge the development of additional training programs, adding that ICE has been “aggressive” in taking steps to ensure effective enforcement in that regard. Our concern, as stated in the body of the report is that more than two years have elapsed since ICE determined to bolster its investigators’ two-week cross training course. That lapse undermines their characterization of their approach as “aggressive.”

The Department disputes our examples of reasons why inspectors and Border Patrol agents do not refer cases to ICE. The Department contends that the examples of competition for credit and a lack of trust in the ability of ICE’s investigators to conduct thorough investigations are not fair because they do not reflect CBP policy and represent the opinions of only a few. While policy may not support the actions of the field, that policy may not be adhered to

unless management enforces it. The data, our field interviews and the March 2005 working group meeting all indicate that CBP referrals to ICE or ICE's acceptance of CBP referrals has declined. The Department also asserts that ICE must receive all of Border Patrol's human smuggling referrals because FBI and DEA do not have jurisdiction over those cases. The logic of that argument fails however, because the Border Patrol agents have their own units that are conducting human smuggling investigations.

The Department denies that the problems in coordination between inspectors, Border Patrol agents, and investigators may have lead CBP to instigate the expansion of its internal investigative capability. If so, we stand corrected, despite having heard the contrary from the field. However, the problems that occur with dueling investigative units remain, such as deconfliction, segregation of information, and failure to detect and uncover more complex criminal enterprises. The Department assures us it will prevent CBP and ICE from pursuing duplicative functions, but we have not received any documentation of programs or functions that persuade us that the problems will be resolved.

The Department is critical of our report for failing to acknowledge the presence of a working group to plan effective implementation of the senior inspector expansion program. Again, while jointly conceived policies are commendable, management does not or cannot always enforce adherence to the resultant agreements. A prime example is the inability of the OBP and OI MOU to coordinate the activities of Border Patrol agents and ICE investigators. Before the creation of the Department, the Border Patrol had "disrupt units" that conducted low-level investigations. The disrupt units would refer more complex investigations to Border Patrol's ASUs. After the ASUs were transferred to ICE with the creation of DHS, Border Patrol units had little incentive to refer those more complex cases to the ASUs in ICE. Despite the notification and coordination measures outlined in the MOU, duplicative cases have arisen when Border Patrol has not referred some cases to ICE, according to senior Border Patrol and ICE management, as well as field-level investigators. Our report cites some of the instances in which the duplicative investigations or independent investigations by CBP senior inspectors and Border Patrol agents have compromised cases.

On a related note, the Department is critical of our use of the phrase, "reformed ASUs." We use that phrase to indicate what we learned during our fieldwork, that Border Patrol has bolstered its ability to investigate cases by allowing its disrupt units to investigate more cases, instead of referring them to ICE ASU investigators. In essence, the Border Patrol has re-established the ASU capability in its disrupt units.

In our report we note that ICE arrests, indictments, convictions, and seizures for drug smuggling cases have declined, which may result from the decline in CBP referrals. We present the drug smuggling data instead of other customs cases that ICE investigates because CBP referrals represent approximately two thirds of the drug smuggling cases. For other customs cases, CBP referrals represent a much smaller proportion. Accordingly, a drop in CBP referrals will be noticed most acutely in the drug smuggling cases. Arrests, indictment, convictions, and seizures in those cases would be expected to decline as a result of a decrease in referrals. We do not find the total number of ICE arrests, indictments, convictions, and seizures that the Department has put forward to be a persuasive rejection of our findings. Many of the cases that ICE investigates are not pursued as a result of CBP referrals. As such, the numbers of total arrests and other enforcement achievements are not indicative of the quality of the coordination and cooperation between CBP and ICE. Moreover, the data underlying the numbers put forward by the Department has not been provided to us, and we cannot independently assess its reliability.

Our report provides a case study in the breakdown of coordination between ICE OI and Border Patrol. In its comments, the Department implies that the case study must not be credible because established procedures and protocols would ensure that ICE could not lose a controlled delivery. Yet, the March 2005 working group summary describes a discussion in which ICE complained that its requests to conduct controlled deliveries are being denied and, as a result, investigations are being hindered. According to the summary, CBP indicated that it had concerns that ICE might not intercept the delivery. While there may be procedures in place to ensure delivery, as of March 2005, CBP was clearly concerned about ICE's ability to intercept the deliveries. The report we got from the field that we cited is credible in light of concerns raised at the March 2005 meeting.

The Department claims that our characterization of the MOU's dispute resolution mechanism as ineffective is incorrect. Often ICE learns of impending deliveries of illegal goods or people shortly before the deliveries are to occur. Because the facts of each delivery will vary and involve differing issues, disputes arise that field-level personnel are unable to resolve, as in the case study example. The problem with using the MOU's dispute resolution mechanism is that elevating issues to headquarters for resolution takes time, and may not settle the problem quickly enough to allow for a controlled delivery of illegal goods. Accordingly, we find that the mechanism is ineffective at resolving controlled delivery disputes in that it may not do so in a timely manner.

As to our failure to acknowledge successful coordination efforts, the one put forward by the Department is ABCI, which had mixed reviews.⁹⁶ In addition, ABCI is the exception, not the rule. As such, while it may have been successful, the success of one specially and very heavily coordinated program does not overcome the day-to-day instances of ineffectiveness that were reported from the field.

Coordination of Intelligence Activities

DHS makes the point that the legacy agencies did not share their databases. We recognize this and also that this was one of the reasons DHS was created – to improve information sharing. However, the practice of not sharing databases continued after DHS was established. CBP and ICE have created their own information stovepipes.

In our report, we concluded that information and intelligence sharing between CBP and ICE was ineffective. In response, DHS provided us with a list of the organizations that it uses to share information and intelligence between CBP and ICE. While this list is impressive, the descriptions of the organizations seem to depict operational activities and not intelligence activities. Our point is that intelligence collaboration is the element missing from the CBP and ICE intelligence activities. While DHS touts the list as evidence of collaboration, we have seen and been provided with very little evidence of intelligence products co-authored by CBP and ICE that were the result of extensive collaboration.

DHS' listing of organizations that facilitate intelligence sharing and its statement “that these examples represent actual collaboration that did not previously exist” highlights what we believe is wrong with the current organizational structure. If CBP and ICE were merged, this extensive collage of organizations needed to facilitate intelligence coordination between CBP and ICE may not be necessary.

When we visited some of these organizations during our fieldwork, CBP and ICE intelligence field staffs characterized their respective intelligence activities as uncoordinated and not integrated with one another. They further reported that effective collaboration was not occurring on a systematic basis.

⁹⁶ In our earlier draft, we were critical of ABCI because of the considerable burden borne by BTS to coordinate the effort. The Department's decision to eliminate BTS rendered this issue moot and we removed its discussion from our final report.

The Secretary's 2SR intelligence committee report referred to DHS intelligence activities as "multiple points of collection and gathering but without any unified coordination and intelligence/information standards and processes." The 2SR report further supports our conclusions with: "DHS components disseminate numerous reports and finished products...but lack true integration and coordination across DHS components." Where effective collaboration was occurring, it was usually due to strong personal relationships between individuals that were formed in the legacy agencies. We acknowledge that there are likely exceptions to this general conclusion.

In its response, DHS suggested that we advocated that all CBP and ICE employees should have unrestricted access to databases. We never advocated this in our report. Rather, we stated in our report, as we restate here, that we agree that access restrictions are necessary. Our report documents concerns expressed by CBP employees in the field that the current database access policies were hampering their ability to perform their mission. Given the nuances of the counterterrorism mission introduced into the border environment since September 11, we would suggest that CBP and ICE reexamine database access policies to ensure that they support current mission requirements.

DHS correctly states that we did not examine the data mining platforms mentioned in its response. Therefore, we cannot provide an evaluation on their effectiveness or usefulness. We do note that none of the intelligence analysts that we interviewed mentioned these platforms and only discussed with us the shortcomings of TECS as an intelligence sharing platform.

In its response, DHS finds fault with the fact that we did not conduct a comparative analysis of TECS and ACS. In our report, we discuss TECS and ACS together only in the context that they were systems that were not designed for intelligence sharing. We compared TECS and ACS to describe a situation where information became "lost" in the FBI's ACS. DHS' response misses this point, which is the potential danger of using a system for a purpose for which it was not intended.

Finally, DHS' response consistently refers to the Secretary's 2SR concepts for improving the department's intelligence activities. We need to point out that these concepts were announced almost six weeks after we completed our fieldwork and approximately two weeks after we provided the Secretary with an advance copy of our draft report. Because these concepts have not yet been implemented, we cannot evaluate whether the proposed 2SR changes will adequately address the issues we identified in our report.

The Role of the Border and Transportation Security Directorate

DHS' response takes umbrage for reporting opinions expressed by some CBP managers that they believed that making the US-VISIT Program an independent entity apart from CBP was not an optimal decision. The opinions expressed to us suggested that BTS did not consult with CBP before this decision was made, or coordinate implementation thereafter. US-VISIT was cited by us as an example of broader complaints about BTS policy decisions.

Federal Protective Service

While DHS' response stated that we made a recommendation to realign FPS, we never made this recommendation. We provided "suggested options" that would more closely align FPS' mission with similar missions of other organizations. Our assumption was that organizations with similar missions would be better able to lead and support FPS' mission. The quote from the HSA that the Department includes in its comments is noteworthy in that it highlights the fact that the HSA was silent on where FPS should be located within DHS.

Forensic Document Laboratory

DHS' response stated that we "lack an understanding of the primary mission of the FDL." DHS goes on to state that the FDL's mission "is to provide forensic examination of seized travel and identify documents." In our report, we stated that the FDL "serviced INS inspectors and investigators with forensic examination of travel documents..." We fail to see how our understanding of FDL's mission differs from that of DHS.

In its response to our historical description of FDL under INS leadership, DHS has chosen to take our statements out of context. In the opening paragraph of this section, we describe former activities of FDL and the composition of its workforce under INS. DHS has misconstrued this opening paragraph as a depiction of the current situation, which it is not.

We acknowledge our error in describing ISRS as a database of fraudulent travel documents and have amended our report accordingly. However, DHS continues to misconstrue our statements by stating that we have incorrectly associated forensic examination with ISRS queries. We never made that association. We stated that by considering only the number of forensic examinations, the full level "of daily support FDL provides to the CBP inspectors is understated." The ISRS queries are part of the support package FDL provides to CBP inspectors.

DHS stated that ICE recently approved the hiring of five FDL positions and that they were not investigators or intelligence officers. DHS does not describe the background of the new employees but they must not have been former inspectors as DHS would have been quick to point this out to us. We welcome ICE's stated commitment to the recruitment and hiring of capable inspectors, but note that this was not the policy in force when we finished our fieldwork in June 2005 and was not the policy when we conducted a follow-up meeting with FDL officials in August 2005.

DHS contends that FDL and FDAU operations are not complementary. We contend that FDL's forensic examination and training capabilities and FDAU's trend analysis capability are very much complementary operations. The operations of both organizations could have a positive synergistic impact on DHS' border enforcement capabilities if they were merged.

Establishment of INS

The Immigration and Naturalization Service (INS) has a long history characterized by name changes and transfers between federal departments. INS arose from the *Immigration Act of 1891*, which created the Office of Superintendent of Immigration in the Department of the Treasury. In 1895, the office changed to the Bureau of Immigration. The Bureau was transferred to the Department of Commerce and Labor in 1903, and in 1906 it was renamed the Bureau of Immigration and Naturalization to reflect its new authority to administer the naturalization process. In 1924, Congress created the Border Patrol within the Immigration Service to control illegal entry along the U.S. border. The Bureau's name changed to INS in 1933. In 1940, INS was transferred to the Department of Justice, where it remained until it was re-organized and transferred to DHS.⁹⁷

INS Mission and Authorities

The mission of the INS was to administer and enforce the nation's immigration laws, which appear in Title 8 of the U.S. Code. Title 8 regulates the admission of foreign visitors, business travelers, and other aliens to the United States. Its provisions fall into two basic functions, first to provide services, such as naturalization and permission for residency, to certain aliens; and, second to publish and enforce rules for entrance into the United States. To fulfill its service and enforcement missions, the INS performed the following:

- Processed and granted immigration-related benefits such as work authorization, employment-based visas, adjustments of status, and naturalization.
- Determined the admissibility of aliens seeking to enter the United States.
- Patrolled the U.S. borders.
- Investigated illegal employment and provided information to employers and benefit providers to prevent illicit employment or benefit receipt.

⁹⁷ U.S. Immigration and Naturalization Service – Populating a Nation: A History of Immigration and Naturalization. http://www.customs.gov/xp/cgiv/toolbox/about/history/ins_history.xml.

- Disrupted and dismantled organizations that engaged in document and benefit fraud and alien smuggling.
- Apprehended, detained, and removed aliens present in the United States who were in violation of immigration or criminal laws.⁹⁸

Operational Elements

INS maintained its headquarters office in Washington, DC. There were 36 district offices in the United States and abroad that oversaw both the service and enforcement activities within their geographic jurisdiction.⁹⁹ A District Director led each district office; District Directors reported to one of three Regional Office Directors, who in turn reported to the Executive Associate Commissioner for Field Operations. In FY 2002, the INS budget was \$6.2 million, and the organization maintained 37,698 positions.¹⁰⁰

Enforcement Components

Border Patrol

The Border Patrol was responsible for patrolling the U.S. borders between the POEs to deter illegal entry into the United States and to interdict illegal aliens and other criminals. Border Patrol's anti-smuggling units worked closely with Border Patrol agents to investigate and prepare cases for prosecution. In FY 2002, the Border Patrol made 955,310 apprehensions of undocumented immigrants attempting to enter the United States.¹⁰¹

Investigations

The investigations organization was responsible for enforcing immigration law within the United States. Its activities encompassed four areas of interest:

- Investigation of immigration law violations and preparation of cases for prosecution by the United States Attorneys office and for hearings

⁹⁸ U.S. Department of Justice, Office of Inspector General, Audit Division, "Immigration and Naturalization Financial Statement Fiscal Year 2002," Audit Report 03-22, May 2003; U.S. Department of Justice Statement, INS Seeks to Hire 8,000 New Employees, April 22, 2002. http://www.rapidimmigration.com/www/latest_ins/April_22_2002.html.

⁹⁹ DHS, *2002 Yearbook of Immigration Statistics, Office of Immigration Statistics*, October 2003.

¹⁰⁰ Immigration and Naturalization Service Budget 1975-2003, http://www.usdoj.gov/jmd/budgetsummary/btd/1975_2002/2002/html/page104-108.htm.

¹⁰¹ Ibid.

before Executive Office for Immigration Review judges, who determined the outcome of administrative immigration law cases.

- Participation in multi-agency task forces against terrorism, violent crime, document fraud, narcotic trafficking, and organized crime.
- Identification of incarcerated aliens who were deportable as a result of their criminal convictions for removal.
- Inspection of workplaces that employed illegal aliens and apprehension of the illegal alien workers and imposition of sanctions against employers that knowingly hired them.¹⁰²

In 2002, the investigations organization completed: 78,841 criminal investigations, with 2,309 prosecutions; 2,061 employer investigations, with 485 arrests; 2,527 fraud investigations, with 253 prosecutions; 2,395 smuggling investigations, with 2,106 prosecutions; and 23,067 inspection/status violators investigations, with 10,538 aliens arrested.¹⁰³

Inspections

Inspectors screened for admissibility aliens seeking entry into the United States at the approximately 300 POEs. INS inspectors had the authority to permit most inadmissible aliens the opportunity to withdraw their application for admission. In some cases, inspectors referred an alien to an immigration judge for removal proceedings. In 1997, inspectors gained authority to order certain aliens removed under expedited removal proceedings without further hearings or review by an immigration judge.¹⁰⁴ In FY 2002, INS conducted 444,687,315 inspections at the POEs. Of those, inspectors determined that 542,000 arriving aliens were inadmissible.¹⁰⁵

INS senior inspectors prepared cases that arose from the POEs for criminal prosecution by United States Attorneys, including cases involving alien smuggling, document fraud, and attempted illegal entry for criminal

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

prosecution by United States Attorneys offices. In FY 2002, inspections reported 1,620 convictions for immigration violations.¹⁰⁶

¹⁰⁶ Ibid.

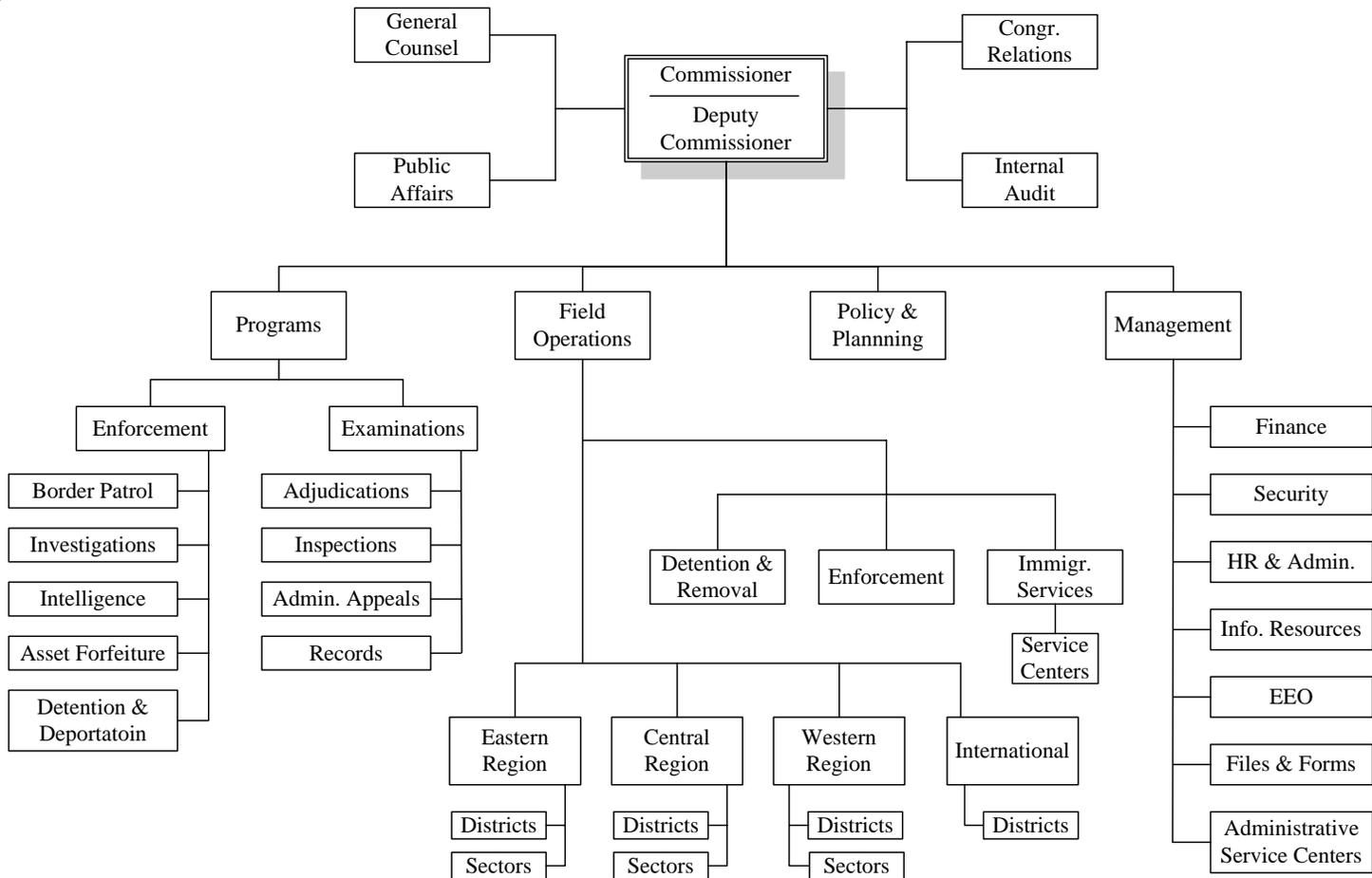
Detention and Deportation

The Detention and Deportation Office determined release conditions for aliens pending their immigration hearings, assumed custody of alien detainees, and ensured that final removal orders were executed by making travel arrangements and providing escort out of the United States when necessary. In 2002, the Detention and Deportation Office detained 202,000 aliens and removed 150,084.¹⁰⁷

The Detention and Deportation Office placed detainees awaiting deportation or other immigration actions in its Service Processing Centers and other detention facilities contracted by INS. In addition, INS contracted with other detention facilities to house detained aliens.

¹⁰⁷ Ibid.

INS Organizational Chart



Establishment of the United States Customs Service

In 1789 Congress established customs districts and positions within the Department of the Treasury dedicated to collecting customs revenue.¹⁰⁸ Congress established the Bureau of Customs in the Department of the Treasury in 1927.¹⁰⁹ The Bureau was renamed the U.S. Customs Service (USCS) in 1973.¹¹⁰

USCS Mission and Authority

USCS was responsible for ensuring that all goods and persons entering and exiting the United States did so in compliance with Title 19 (Customs Duties), and Title 18 (Crimes and Criminal Procedure), of the United States Code.¹¹¹ It assessed customs duties, taxes, and fees, and imposed fines and penalties for trade and import law violations. It worked with the international trade community to promote compliance with the laws and endeavored to promote efficient movement of people and goods in and out of the United States. To ensure compliance with these statutes, USCS screened travelers and conveyances, such as boats, vehicles, and aircraft, that attempted to enter or exit at more than 300 U.S. POEs.¹¹² In addition, USCS was authorized to enforce hundreds of provisions contained in over 130 other laws.¹¹³ The USCS mission grew to include many enforcement activities, such as preventing import and export of narcotics, stolen goods, products infringing on intellectual property and trademark laws, weapons, and currency in excess of statutory limits. In addition, USCS enforced money laundering statutes to seize the proceeds of illegal smuggling, trade fraud, and export activities.¹¹⁴

¹⁰⁸ Remarks of U.S. Customs Commissioner Robert C. Bonner, Treasury Day Ceremonies, www.customs.gov/xp/cgov/newsroom/commissioner/speeches_statements/archives;

U.S. Customs Service – Over 200 Years of History, <http://www.cbp.gov/xp/cgov/toolbox/about/history/history.xml>.

¹⁰⁹ 19 U.S.C. § 2071.

¹¹⁰ Treasury Dept. Order 165-23, Apr. 4, 1973.

¹¹¹ U.S. Customs Service Strategic Plan, Fiscal Years 1997-2002.

¹¹² U.S. Customs Service Accountability Report, Fiscal Year 2000.

¹¹³ Department of the Treasury, Office of Inspector General, CFO Audit of the U.S. Customs Service, Entry Processing Cycle Memorandum, September 1995. U.S. Customs Service Strategic Plan, *supra*.

¹¹⁴ U.S. Customs Service Accountability Report, *supra*.

USCS Operational Elements

In FY 2000, USCS had approximately 20,000 employees and a budget of \$3.6 million.¹¹⁵ USCS was led by its Commissioner, who reported to the Secretary of the Department of the Treasury.

There were three major operational elements: Office of Investigations (OI), Customs Management Centers (CMC), and Strategic Trade Centers (STC). They were charged with managing four major program areas: 1) enforcement systems, which worked to disrupt individuals and organizations from violating the laws that the USCS enforced; 2) passenger processing, which consisted of inspectors and canine enforcement handlers who screened travelers for customs laws violations while permitting travelers to move expeditiously through the POEs; 3) trade compliance, which focused on improving compliance with import trade laws through cooperation and coordination with the trade community; and 4) the outbound program, which sought better enforcement of and compliance with export laws and regulations.¹¹⁶

Office of Investigations

The Office of Investigations (OI) maintained field offices that were responsible for the enforcement systems activities within the office's geographic jurisdiction. Field offices were led by Special Agents-in-Charge who developed and executed enforcement strategies to ensure compliance with national policies and procedures. The Special Agents-in-Charge coordinated with the Customs Management Centers (CMCs) to conduct joint operations with the inspectors at the POEs.¹¹⁷ Major areas of investigation the OI field offices pursued, included narcotics, money laundering, trade fraud, and cyber smuggling. The OI staff included investigative agents, pilots, and intelligence research specialists. In FY 2000, the investigative field offices reported a total of 13,923 arrests and 11,001 convictions.¹¹⁸

¹¹⁵ Ibid.

¹¹⁶ U.S. Customs Service Accountability Report, *supra*.

¹¹⁷ Ibid.

¹¹⁸ Ibid.

Customs Management Centers

In addition to cooperating with OI on enforcement matters, the 20 Customs Management Centers (CMCs) oversaw the implementation of the passenger processing, trade compliance, and outbound program efforts within their geographic area. The programs targeted high-risk passengers and conveyances in advance of arrival at the POEs. The inspectors and canine enforcement officers at the POEs conducted in-depth screening of high-risk travelers and conveyances, while expediting the screening of those who represented a low risk. In FY 2000, the CMCs oversaw a staff of 7,467 inspectors and 631 canine enforcement officers, who processed 489 million passengers and 140 million trucks, cars, aircraft, and boats. Of those, USCS staff arrested 23,670 people and seized 22,956 pounds of cocaine, 1,960 pounds of heroin, 533,887 pounds of marijuana, \$17,449,057 in currency, and \$138,243,384 in illegal merchandise.¹¹⁹

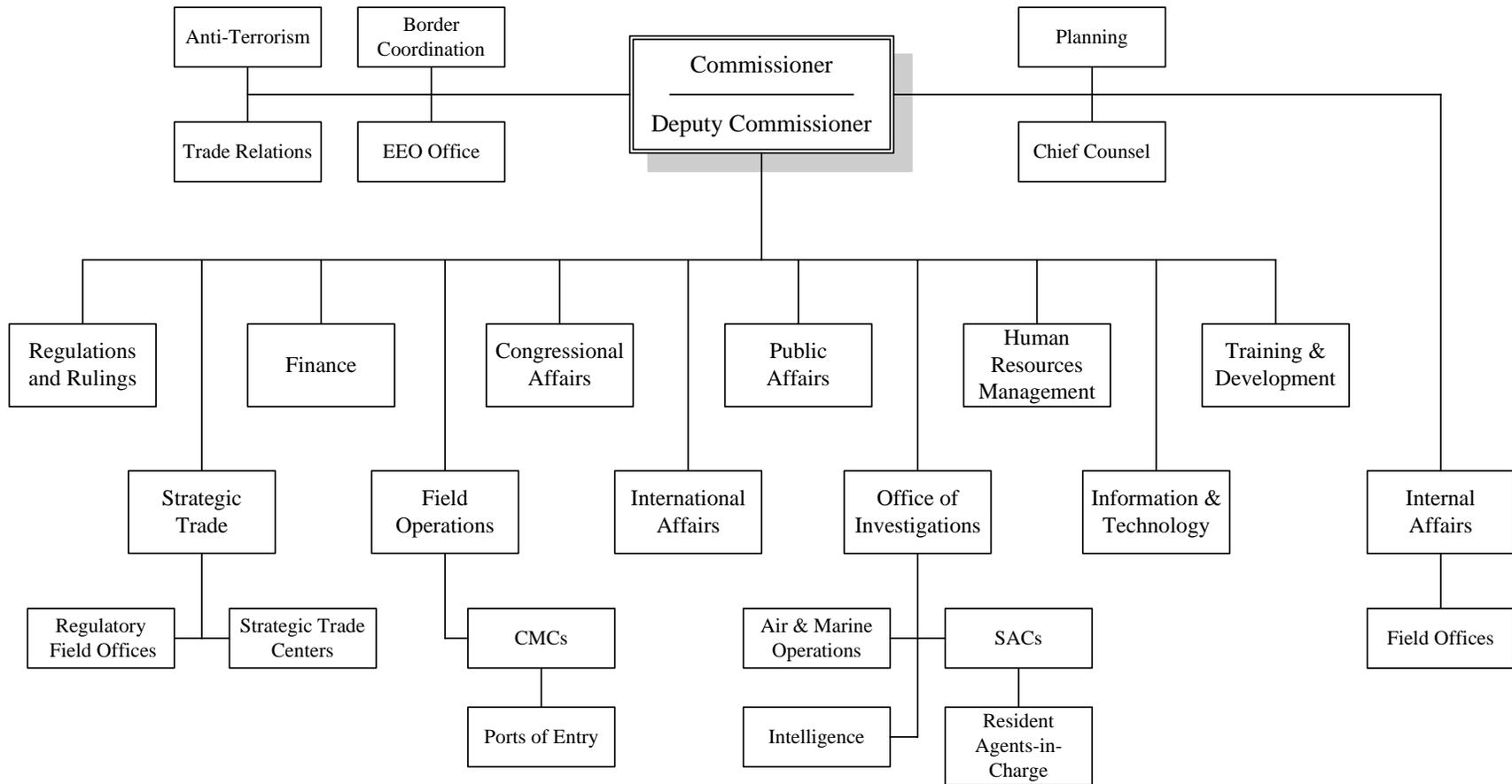
Strategic Trade Centers

The five Strategic Trade Centers (STCs) were staffed with auditors and other personnel to monitor trade compliance and analyze compliance trends. The Strategic Trade Centers worked with inspectors and investigators to target likely violators of the laws. In FY 2000, the STCs measured an 83 percent compliance rate with import laws, which was an increase from the preceding four years.¹²⁰

¹¹⁹ U.S. Customs Service Accountability Report, *supra*.

¹²⁰ The measured rate is for compliance with all laws, known as the “letter of the law” compliance rate, which measures all discrepancies regardless of severity. U.S. Customs Service Accountability Report, Fiscal Year 2002.

USCS Organizational Chart



Establishment of BTS

The Border and Transportation Security (BTS) Directorate was created by the *Homeland Security Act of 2002* and established on January 24, 2003.

BTS' Mission and Authorities

Effective enforcement of United States customs and immigration laws means that BTS personnel must prevent the entry of terrorists or instruments of terror from entering the country and ensure the speedy, orderly, and efficient flow of lawful traffic and commerce.

Additionally, BTS personnel conduct agriculture inspections and coordinate border and transportation security elements of the National Strategy for Homeland Security.

BTS acquired specific authorities and personnel from USCS, INS, TSA, FPS, ODP, FLETC, and USDA. Elements of USCS and INS were broken up and regrouped into CBP and ICE within BTS, and USCIS. CBP merged together agriculture, customs, and immigration inspectors at POEs and Border Patrol agents between the POEs into "One Face at the Border." Customs and immigration investigators, in addition to detention and removal resources, moved to ICE. More detailed descriptions of CBP and ICE functions can be found in other appendices of this report.

BTS components must secure approximately 8,000 miles of land border with Canada and Mexico, 95,000 miles of shoreline, and 3.4 million square miles of free trade economic zones. Of the estimated 500 million people who enter the United States annually, more than half are not American citizens. In addition, roughly 11.2 million trucks and 2.2 million rail cars cross the border into the United States every year. Approximately 7,500 foreign flagships annually make 51,000 calls to American ports. Each year, 730 million people travel on commercial aircraft on international and domestic flights, with 700 million pieces of luggage screened.

BTS Components

BTS Headquarters Component

The BTS headquarters component oversees all the agencies and programs within the directorate and houses the Office of the Under Secretary. It contains staff in the following areas: policy, operations, international affairs, strategic planning, screening coordination, information technology, and resource management. Some of these personnel are assigned to BTS on a permanent basis, while others are temporarily assigned.

The budget for the BTS headquarters component covers basic operating costs and salaries. The table below depicts the budget and staff for FYs 2004 – 2006 for the BTS headquarters component.

BTS Budget Allocations and Full-Time Equivalent Staff

Border and Transportation Security (BTS)		
Fiscal Year	Budget	FTEs
2004	\$8,058,000	58
2005	\$9,617,000	67
2006	\$10,617,000	59

Transportation Security Administration

TSA was transferred to DHS from the Department of Transportation and has several missions. TSA protects U.S. transportation systems and ensures freedom of movement for people and commerce. TSA has statutory responsibility for security over all modes of transportation, with special authority over airport security and other law enforcement personnel, which include canine units and armed airline crew members.

Federal Law Enforcement Training Center

FLETC was transferred to DHS from the Department of the Treasury. FLETC provides law enforcement training to federal law enforcement officers to prepare them to fulfill their responsibilities. FLETC

provides professional development services to over eighty federal agencies. Additionally, it offers courses to state, local, and international law enforcement agencies. BTS supervises FLETC's administrative and financial activities. FLETC's main training facility is located in Glynco, Georgia, with several other satellite facilities located elsewhere.

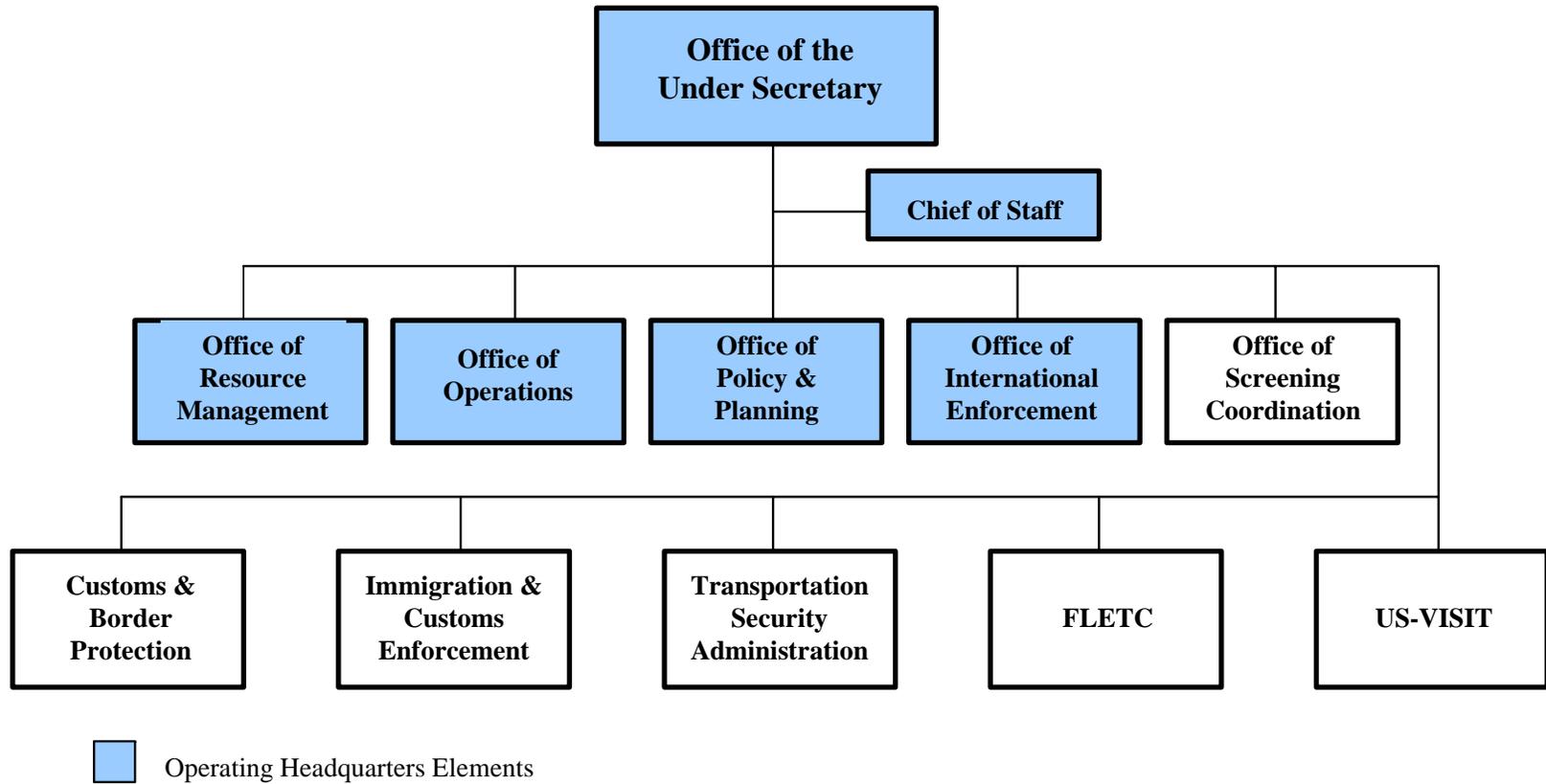
United States Visitor and Immigrant Status Indicator Technology

The US-VISIT Program Office was created within the BTS directorate in July 2003. The Program Office is positioned organizationally at a level comparable to CBP and ICE. The purpose of US-VISIT is to identify visitors who may pose a threat to the security of the United States, who may have violated the terms of their admission to the United States, or who may be wanted for the commission of a crime in the United States or elsewhere. The US-VISIT Program Office is responsible for designing and implementing the automated, electronic entry-exit control system as required by Congress.

The US-VISIT program collects biographic and biometric information concerning foreign nationals traveling to the United States through designated POEs. The information collected is used to determine whether visitors should be denied entry into the United States; apprehended or detained for law enforcement action; allowed to receive, extend, or otherwise change immigration status; or provided special protection or attention. The US-VISIT program establishes the capability and capacity to electronically record the entry and exit of such visitors by reconciling entry and exit records so that determinations may be made on whether visitors overstay the period of their admission to the United States.

On January 5, 2004, DHS began enrolling foreign nationals' information in US-VISIT. As of January 3, 2005, 16.9 million foreign visitors had registered with the system. US-VISIT has led to the arrest or denied admission of 372 criminals or immigration violators. Federal penitentiary escapees, convicted rapists and drug traffickers have been intercepted because of US-VISIT, in addition to other individuals who had been convicted of armed robbery, manslaughter, credit card fraud, and visa fraud.

BTS Organizational Chart



Appendix C
Organizational Overview of the Border and Transportation Security Directorate

BTS Personnel Schedule

Border and Transportation Security (BTS) - Headquarters Elements On-Board Full-Time Positions						
BTS Headquarters Elements	Beginning FY 2004			Mid 2nd Qtr FY 2005		
	Permanent	Detailed	Total	Permanent	Detailed	Total
Office of the Under Secretary						
Subtotal	4	7	11	11	5	16
Office of Resource Management						
Management ¹	...	1	1	1	1	2
Resource Analyst/GS-15 ²	...	2	2	4	...	4
Planning Specialist/GS-14	...	2	2	...	3	3
Administrative Support/GS-14	...	1	1	3	2	5
Subtotal	...	6	6	8	6	14
Office of Operations						
Management	1	4	5	4	...	4
Special Assistant/GS-15	...	6	6	5	2	7
Liaison Representative/GS-15	...	...	...	...	14	14
Field Operations Program Manager/GS-15	...	1	1	4	...	4
Administrative Support/GS-12	1	1	2	2	1	3
Subtotal	2	12	14	15	17	32
Office of Policy and Planning						
Management	2	...	2	4	...	4
Policy Advisor/GS-15	...	3	3	9	8	17
Administrative Support/GS-12	...	...	...	3	...	3
Subtotal	2	3	5	16	8	24
Office of International Enforcement						
Management	...	...	...	2	...	2
Liaison Representative/GS-15	...	...	...	1	...	1
Subtotal	...	...	...	3	...	3
BTS Headquarters Total	8	28	36	53	36	89

- 1.) Management positions include those of presidential appointees and those of staff in the senior executive service.
- 2.) All General Service (GS) designations are intended only to show the journeyman grade level for the positions contained in this table.

Establishment of CBP

CBP operates within the “One Face at the Border” concept. It serves as a consolidated border enforcement organization comprised of former inspectors and Border Patrol agents from the Department of Justice’s INS, the Department of Agriculture’s Animal and Plant Health Inspection Service, and Department of Treasury’s Customs Service. CBP was established in March 2003.

CBP’s Mission and Authorities

CBP’s mission is to enforce immigration, customs, and agricultural inspection laws. Border enforcement responsibilities include preventing the flow of illegal aliens and illegal narcotics, securing and facilitating legitimate global trade and travel, and protecting the nation’s food supply. CBP employs inspectors who inspect and Border Patrol agents who detect, deter, and interdict people and goods entering the United States at and between POEs along the border. CBP places a priority on keeping terrorists and terrorist weapons from gaining entry into the United States.

Additionally, CBP conducts operations and activities away from the border, such as the Container Security Initiative, which increases security for containerized cargo shipped to the United States from around the world; and the International Narcotics Control and Counterproliferation Training Programs, which support the modernization of foreign customs administrations, combat terrorism, narcotics trafficking, and transnational crime. CBP also promotes international trade standards and trade standards compliance through agreements with foreign governments and international organizations such as the World Customs Organization, which develops guidelines, benchmarks, and best practices for the security and efficiency of the international supply chain, and through agreements with the commercial sector such as the Americas Counter Smuggling Initiative and the Business Anti-Smuggling Coalition, which counter the smuggling of narcotics and contraband, as well as the introduction of possible terrorist implements in commercial cargo and conveyances.

CBP has five primary strategic goals: 1) preventing terrorism at and between POEs along the border by denying entry of terrorists, terrorist weapons, contraband, and illegal aliens; 2) unifying as one border agency by consolidating all border enforcement components; 3)

balancing legitimate trade and travel with security by facilitating efficient transport of legitimate cargo and people while safeguarding and securing the borders; 4) protecting America and its citizens by prohibiting the introduction of illegal contraband and other illicit materials; and 5) modernizing and managing by building a strong modern management infrastructure.

CBP Operational Elements

CBP is headed by a Commissioner who reports to the Under Secretary for Border and Transportation Security. CBP has three primary operational elements: Office of Field Operations, Office of Border Patrol, and Office of Air and Marine Operations. CBP has 40,000 employees and a budget of approximately \$6 billion. The table below depicts CBP budget and staff during FYs 2004 - 2006.

CBP Budget Allocations and Full-Time Equivalent Staff

Customs and Border Protection (CBP)		
Fiscal Year	Budget	FTEs
2004	\$5,987,807,000	38,692
2005	\$6,408,285,000	40,616
2006	\$6,716,897,000	40,872

Office of Field Operations

OFO enforces customs, immigration, and agricultural laws and regulations at POEs. It also ensures the safe and efficient flow of people and goods through POEs via four programs: 1) Border Security and Facilitation, which involves interdiction and security, passenger operations, and canine enforcement; 2) Trade Compliance and Facilitation, which includes summary operations, trade risk management, account management, enforcement, seizures, and penalties; 3) Operations, which includes logistics, human resources, field programs, and field liaison; and 4) National Targeting and Security, which includes the National Targeting Center charged with providing tactical and analytical research in support of customs enforcement and anti-terrorism operations.

OFO has over 25,000 employees, including more than 19,000 CBP officers and agricultural specialists. It maintains programs at 20 field offices, 317 POEs, and 14 pre-clearance stations in Canada and the Caribbean.

Office of Border Patrol

The Border Patrol is the primary federal law enforcement organization responsible for preventing the entry of terrorists and terrorist weapons into the United States between land POEs. The Border Patrol utilizes and exploits resources such as electronic surveillance, detection, and communications technology to interdict and deter terrorists and their instruments, illegal immigrants, and contraband at the border.

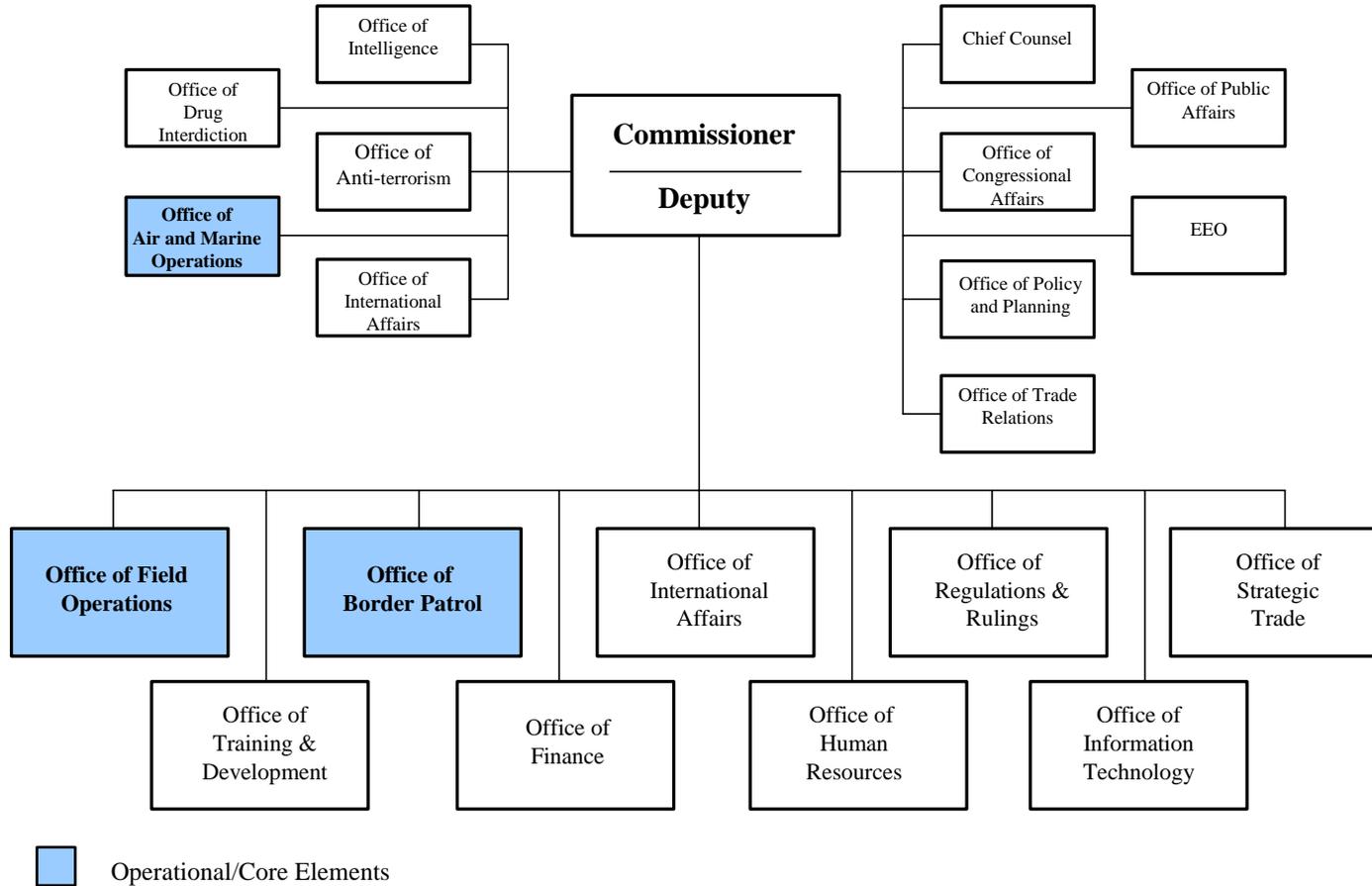
The Border Patrol is divided into 20 sectors along the borders. It has more than 12,700 personnel, including approximately 10,800 Border Patrol agents. During FY 2004, Border Patrol agents arrested over 1.16 million illegal aliens.

Office of Air and Marine Operations

AMO supports CBP's detection and interdiction mission. It does this by providing air and marine law enforcement support to the Border Patrol. AMO also provides airspace security for cities, and provides transportation and surveillance support to other federal, state, and local law enforcement agencies during anti-money laundering, counter-terrorism, anti-weapons smuggling, and intelligence operations.

To execute its mission, AMO utilizes 12 air and marine branches, two surveillance support branches, 11 air units, and 16 marine units located throughout the continental United States and along the southern tier of the United States and Puerto Rico. AMO possesses operational assets of over 1,000 employees, 130 aircraft, and 60 marine vessels.

CBP Organizational Chart



CBP Personnel Schedule

Customs and Border Protection (CBP) On-Board Full-Time Permanent Positions			
CBP Components	Beginning FY 2004	Mid 2nd Qtr FY 2005	Change
Office of Border Patrol			
Border Patrol Agent (Series 1896)/GS-11	10,571	10,684	1%
Other Occupations	1,595	1,328	-20%
Subtotal	12,166	12,012	-1%
Office of Field Operations (OFO)			
Agriculture Specialist/GS-12 ¹	1,470	1,493	2%
CBP Officer (Series 1884)/GS-12	17,383	17,593	1%
Other Occupations ²	4,354	4,416	1%
Subtotal	23,207	23,502	1%
Air and Marine Operations (AMO)³			
Pilot/GS-13	...	468	100%
Agent (Series 1811)/GS-13	...	12	100%
Aviation Enforcement Officer/GS-13	...	37	100%
Marine Enforcement Officer/GS-13	...	91	100%
Detection Specialist/GS-12	...	129	100%
Intelligence Research Specialist/GS-14	...	14	100%
Other Occupations	...	287	100%
Subtotal	...	1,038	100%
All Other CBP⁴			
Subtotal	3,313	4,365	24%
CBP TOTAL	38,686	40,917	5%

- 1.) All General Service (GS) designations are intended to show the journeyman grade level for the positions contained in this table.
- 2.) The category "Other Occupations" contains administrative and programmatic positions not included among those that are highlighted as directly supporting operations.
- 3.) AMO started FY 2004 in ICE and was later moved to Customs and Border Protection. Thus, beginning in FY 2004 personnel statistics for AMO are reported in the ICE personnel schedule.
- 4.) The "All Other CBP" category is composed mainly of personnel from CBP Headquarters in Washington, DC. These personnel come from such headquarters elements as the Office of Policy and Planning, Office of Strategic Trade, Office of Finance, Human Resources, and Information Technology.

Establishment of ICE

ICE is DHS' largest investigative agency. It was established in March 2003 and is comprised of investigators, detention and deportation officers, immigration enforcement agents, and other federal law enforcement and administrative support personnel from the USCS, INS, and GSA. The Federal Air Marshal Service was transferred to ICE from TSA in December 2003.

ICE's Mission and Authorities

ICE's mission is to prevent acts of terrorism by targeting people, money, and materials that support terrorist and criminal activities. ICE is responsible for identifying and eliminating vulnerabilities in the nation's border, economic, transportation, and infrastructure security. ICE serves functions relating to investigation, detection of vulnerabilities, facility and flight security, and alien detention and removal. ICE combines customs and immigration law enforcement authorities, which allow it to combat terrorists and criminals at their points of origin and potential points of attack both within and outside the United States.

ICE has four primary strategic goals: 1) prevent the unlawful cross-border movement of people, money, and materials; 2) use unique access to customs and immigrations information to address threats and vulnerabilities to homeland security; 3) secure the nation and communities by expeditiously removing terrorists and other threats to public safety; and 4) secure federal properties, key assets, the aviation domain, and events of national interest from terrorist and criminal attacks.

ICE Operational Elements

ICE is led by an Assistant Secretary who reports directly to the Under Secretary for BTS. ICE has five primary operational elements: Federal Protective Service, Federal Air Marshal Service, Office of Detention and Removal, Office of Investigations, and Office of Intelligence. ICE has more than 14,000 personnel and a budget of \$3.5 billion. The table below depicts ICE budget and staff during FYs 2004 - 2006.

ICE Budget Allocations and Full-Time Equivalent Staff

Immigration and Customs Enforcement (ICE)		
Fiscal Year	Budget	FTEs*
2004	\$3,623,715,000	14,688
2005	\$3,845,178,000	14,486
2006	\$4,364,270,000	15,440

*Numbers do not include FAMS

Federal Protective Service

FPS is responsible for policing, securing, and ensuring a safe environment for GSA-administered federal facilities. It is comprised of over 1,300 security officers and investigators. FPS also conducts investigations and provides emergency response to incidents that occur on federal properties that it is responsible for securing.

Federal Air Marshal Service

FAMS was transferred from TSA to ICE in December 2003. It is responsible for ensuring confidence in the civil aviation system through the deployment of federal air marshals to detect, deter, and defeat hostile acts targeting commercial airlines, airports, passengers, and crews. The number of federal air marshals is sensitive security information.

Office of Detention and Removal

DRO enforces immigration laws and seeks to ensure the departure of all removable aliens from the United States. Its operations include detaining, processing, and removing removable aliens, as well as apprehending absconding and fugitive aliens. With over 3,400 employees, DRO also manages and inspects detention facilities throughout the country that house illegal aliens as they are processed through removal proceedings, until they are repatriated.

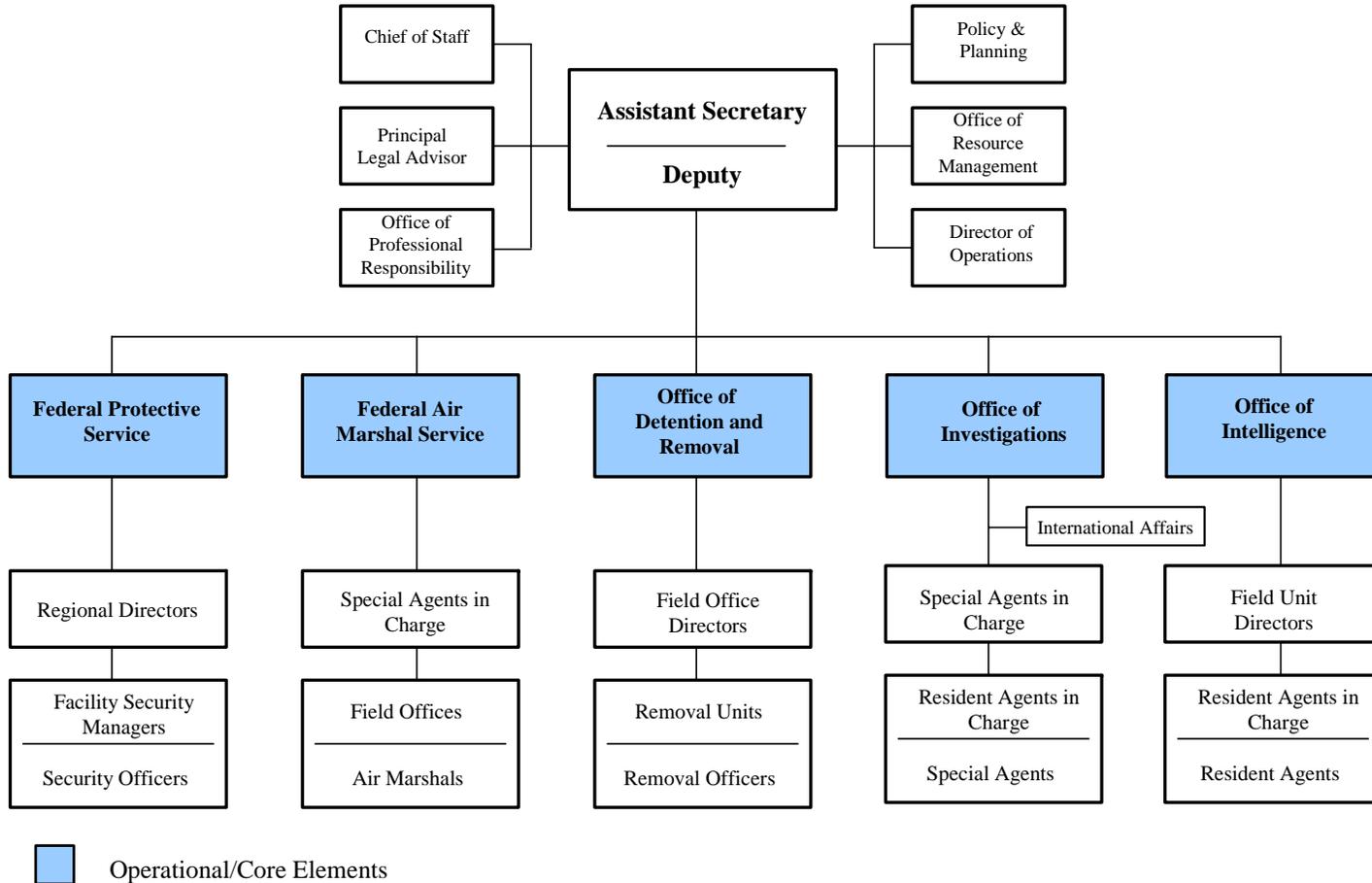
Office of Investigations

OI conducts both domestic and international investigative activities. It focuses on a broad array of national security, financial and smuggling violations including illegal arms exports, financial crimes, commercial fraud, human trafficking, narcotics smuggling, child pornography and exploitation, and immigration fraud. It also conducts investigations aimed at protecting critical infrastructures. OI has four divisions: 1) National Security Investigations, 2) Financial Investigations, 3) Smuggling/Public Safety, and 4) Investigative Services.

Office of Intelligence

ICE-Intel collects, analyzes, and shares information on critical homeland security vulnerabilities. It is responsible for the collection, analysis, and dissemination of strategic and tactical intelligence data for use by operational components of ICE and DHS. It compiles and analyzes data and information related to the movement of people, money, and materials into and out of the United States with the goal of providing accurate and timely information to ICE leadership and field agents in support of law enforcement operations. ICE-Intel has four headquarters divisions: 1) Intelligence Operations, 2) Field Intelligence, 3) Intelligence Support, and 4) Mission Support. It has six FIUs located in Chicago, New York City, Los Angeles, Tucson, Houston, and Miami. FIUs provide strategic level intelligence as well as case support on large, complex cases for ICE.

ICE Organizational Chart



Appendix E
Organization Overview of Immigration and Customs Enforcement

ICE Personnel Schedule

Immigration and Customs Enforcement (ICE) On-Board Full-Time Permanent Positions			
ICE Components	Beginning FY 2004	Mid 2nd Qtr FY 2005	Change
Detention and Removal Operations (DRO)			
Deportation Officer (Series 1801)/GS-12	841	889	5%
Immigration Enforcement Agent (Series 1801)/GS-9	1,752	1,945	10%
General Investigation (Series 1801 & 02)/GS-11	421	417	-1%
Intelligence Research Specialist/GS-14	1	1	...
Other Occupations	430	416	-3%
Subtotal	3,445	3,668	6%
Federal Air Marshal Service (FAMS)⁴			
Subtotal	N/R	N/R	N/R
Federal Protective Service (FPS)⁵			
Subtotal	1,372	1,385	1%
Office of Intelligence (ICE-Intel)			
Agents (Series 1811)/GS-13	36	30	-20%
General Investigation (Series 1801 & 02)/GS-11	25	17	-47%
Intelligence Research Specialist/GS-14	215	211	-2%
Other Occupations	38	37	-3%
Subtotal	314	295	-6%
Office of Investigations (OI)			
Deportation Officer (Series 1801)/GS-12	2	4	50%
Immigration Enforcement Agent (Series 1801)/GS-9	131	141	7%
Agents (Series 1811)/GS-13	5,387	5,624	4%
General Investigation (Series 1801 & 02)/GS-11	668	692	3%
Intelligence Research Specialist/GS-14	237	237	...
Other Occupations	487	540	10%
Subtotal	6,912	7,238	5%
Air and Marine Operations (AMO)¹			
Pilot/GS-13	462	...	-100%
Agent (Series 1811)/GS-13 ²	15	...	-100%
Aviation Enforcement Officer/GS-13	40	...	-100%
Marine Enforcement Officer/GS-13	84	...	-100%
Detection Specialist/GS-12	122	...	-100%
Intelligence Research Specialist/GS-14	16	...	-100%
Other Occupations ³	276	...	-100%
Subtotal	1,015	...	-100%
All Other ICE⁶			
Subtotal	2,309	1,770	-30%
ICE Total	15,367	14,356	-7%

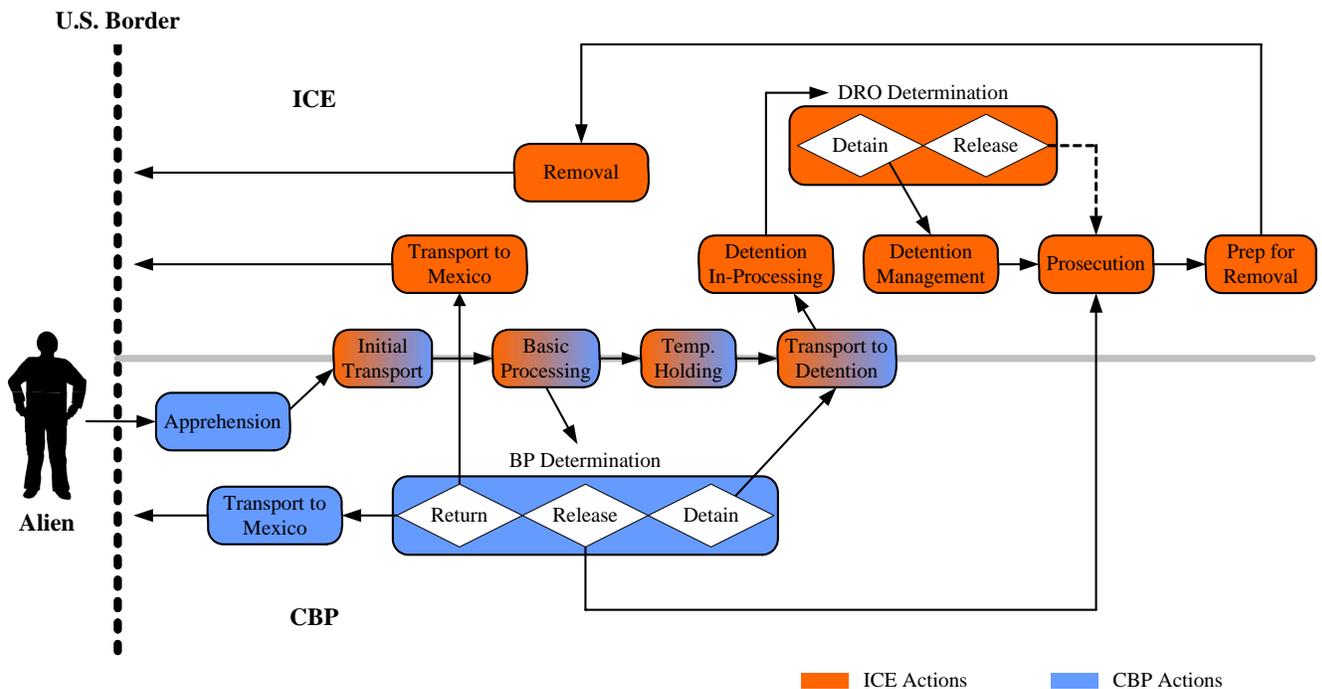
- 1.) AMO started the year in ICE and was later moved to CBP. Thus, middle of 2nd Quarter FY 2005 personnel statistics for AMO are reported in the CBP personnel schedule.
- 2.) All General Service (GS) designations are intended to show the journeyman grade level for the position.
- 3.) The "Other Occupations" category contains management and administrative positions not included among those that are highlighted as directly supporting operations.
- 4.) Personnel statistics for FAMS are sensitive security information. FAMS transferred from TSA on 12/01/2003.
- 5.) FY 2004 data for FPS do not begin on 10/18/2004 like the FY 2004 data for other ICE subcomponents. FY 2004 statistics for FPS begin on 08/22/2004 because FPS was administratively supported by GSA prior to this date.
- 6.) The "All Other ICE" category is composed mainly of personnel from ICE Headquarters in Washington, DC. These personnel come from a number of offices including the Office of Policy and Planning, Office of Chief Counsel, and the Office of Professional Responsibility.

An Assessment of the Proposal to Merge CBP and ICE

Operational Scenarios Illustrating Interconnectedness

CBP and ICE customs and immigration enforcement efforts are intertwined to a large extent. The operational interconnectedness of CBP and ICE in these areas is best illustrated by two common enforcement scenarios these organizations face. The first scenario tracks the processing and removal of an illegal alien seeking entry into the United States between POEs. The second scenario involves contraband transiting a land POE and the execution of a controlled delivery, an investigative technique used to expand the impact of enforcement efforts by permitting criminal schemes to develop and implicate more criminal associates. In both cases, operational control over the process may shift from one agency to the other agency and back again. These scenarios are not intended to reflect all possible process outcomes, but are intended to demonstrate common operational linkages between CBP and ICE.

Scenario One: Illegal Entry Between Ports of Entry



CBP arrests illegal aliens at POEs, as well as between POEs. CBP's Border Patrol apprehends aliens between POEs. To illustrate the processing of aliens apprehended by CBP, we describe the process as it is played out between POEs along the Southwestern border.

Apprehension. Illegal aliens crossing into the United States between POEs come to the attention of CBP's Border Patrol by a number of possible means. Aliens may activate a Border Patrol sensor or be observed on camera, through aerial surveillance, through Border Patrol agents patrolling the area, or by a concerned citizen who may call the Border Patrol to report an illegal crossing. In response to such alerts, Border Patrol agents are dispatched to apprehend the alien.

Initial Transport. After apprehending an alien and making a preliminary determination as to the alien's immigration status, the Border Patrol agent(s) may personally transport the alien to a Border Patrol station or call for transportation support. This initial transportation from the site of apprehension to the nearest Border Patrol station is performed by ICE's DRO in some instances and the Border Patrol in others.

Basic Processing. Upon arrival at a Border Patrol station, adult aliens are fingerprinted¹²¹ and biographic and personal history information is recorded. Their fingerprints are then checked against records in the Automated Biometric Identification System (IDENT), a system with records of past immigration law violators. Also, the alien's prints are searched against the FBI's Integrated Automated Fingerprint Identification System (IAFIS), which captures fingerprints from individuals with criminal records in the state, federal, and military justice systems.¹²² Meanwhile, the alien's demographic and personal history information is checked against a number of other systems, including:

- CBP's TECS/IBIS to determine whether the alien has been determined inadmissible to the United States in the past.
- ICE's Enforcement Case Tracking System (ENFORCE) to determine whether the Border Patrol has apprehended the alien in the past.

¹²¹ Apprehended minors under the age of 14 are not fingerprinted.

¹²² The IDENT system uses two fingerprints, whereas the IAFIS system checks for records using fingerprints from ten digits.

- ICE's DACS to determine whether the alien was previously removed from the United States.
- USCIS' Central Index System to determine whether the alien has active or expired immigration benefits or whether he or she has been denied such benefits in the past.
- DOJ's National Crime Information Center (NCIC) to determine whether the alien has a criminal record.

The results from these system checks are used in determining the subsequent disposition of the alien. These initial processing efforts usually are performed by the Border Patrol, but may be performed by DRO staff at some Border Patrol stations.

Temporary Holding. While awaiting results from initial processing and a judgment from the Border Patrol on their disposition, aliens are typically placed in a temporary holding facility. Usually located at a Border Patrol station, these facilities are not designed to accommodate aliens for long periods of time. Aliens are held in these facilities for a matter of hours or days. Limits on the maximum amount of time an alien may be held at these facilities varies by location and situation, ranging from 12 to 72 hours. Management and support for these facilities and the aliens housed in them are often provided by the Border Patrol, but, in some cases, are provided by DRO.

Border Patrol's Immigration Status Determination. Before making a determination on the future disposition of the alien, the Border Patrol evaluates the results of the system checks described earlier, the circumstances in which the alien was apprehended, and other information it has gathered from the alien.

Criminal aliens, whether apprehended during the commission of a criminal act or sought for a previously committed crime, are turned over to the appropriate authority. For federal crimes, custody of the criminal alien reverts to the U.S. Marshals Service.

If the alien is not a known criminal and is a Mexican national, the Border Patrol may give the alien the opportunity to acknowledge his or her illegal status and voluntarily return to Mexico under escort. Alternatively, the Border Patrol may seek to remove the alien through an administrative process. Administrative removal options available to the Border Patrol include: expedited removal, administrative removal, stipulated removal, or

reinstatement of a past removal order. In some cases, the alien's removal requires a hearing before an immigration judge.

For removal proceedings that require more than a few days, the Border Patrol must determine whether to seek the further detention of the alien or release them into the United States pending immigration action.¹²³ The Border Patrol may release aliens into the community in exchange for a bond payment or on their own recognizance.

- *Return.* The escort of aliens voluntarily returning to Mexico is currently performed by both the Border Patrol and DRO. (*Transport to Mexico*)
- *Release.* In all cases in which an alien is released from Border Patrol custody prior to removal from the United States, the Border Patrol issues a Notice to Appear (NTA) to the alien indicating the date and time of the alien's required appearance for a subsequent immigration proceeding. The Border Patrol routes all NTA case files to DRO. DRO is then responsible for the case management of the alien's immigration proceeding and the enforcement of any pursuant EOIR judgment.
- *Detain.* Before determining that an alien should be detained pending immigration proceedings, the Border Patrol must consult with DRO to determine whether DRO has available detention space. Before preparing the alien for transport to a DRO facility, the Border Patrol provides applicable paperwork to DRO, including the alien's biographic information and a photograph. Advance coordination with DRO also involves the selection of an appropriate detention facility for the alien.

Transport to Detention. DRO or the Border Patrol transports the alien to the designated DRO detention facility. DRO houses aliens in a range of detention facilities. DRO operates eight Service Processing Centers of its own and maintains contracts and service agreements with private, county, and local facilities to fill its remaining detention space needs.

Detention In-Processing. Upon arrival at the designated detention facility, DRO staff process the alien into the facility. This in-processing ensures that

¹²³ The detention of aliens is mandatory in some cases. With few exceptions, for example, aliens in expedited removal proceedings must be detained prior to removal.

the alien is accompanied by all his or her belongings, identification, and required paperwork. DRO staff complete additional paperwork, log-in and secure the alien's personal belongings, and establish a detention category for the alien based on criminal history, gender, and other information. Aliens in different detention categories are typically detained in separate units within DRO detention facilities.¹²⁴

DRO's Detain or Release Determination. Much like the Border Patrol, DRO has the authority to release aliens on their own recognizance or on bond. DRO may elect to release an alien, for example, if in so doing they are able to detain another alien who represents a greater danger to the community. While DRO may choose to continue to detain an alien, it also may choose to supervise the alien by alternative means. DRO alternatives to detention include electronic monitoring, telephonic reporting, and home and worksite visitation.

Detention Management. DRO is responsible for the welfare of aliens detained in its facilities. Consistent with this obligation, DRO provides meals, health care, supervision, and security services for detained aliens. In addition, to ensure that aliens detained in these facilities are safe and secure, and receive humane treatment, DRO monitors detention conditions and routinely inspects facilities for compliance with approved detention standards.

Prosecution. Alien removal hearings are conducted before an immigration judge with the DOJ's EOIR. Such hearings are conducted for aliens released into the community, as well as those detained by DRO. During these proceedings, DHS's position that the alien should be removed is presented by an attorney from ICE's OPLA. Before prosecuting the case, OPLA attorneys receive relevant case information from DRO.

Immigration judges weigh the evidence presented by OPLA against information from the alien and then render a judgment.¹²⁵ Immigration judges usually determine that the alien is inadmissible and issue a final order of removal from the United States.¹²⁶

Criminal cases against illegal aliens are tried before criminal courts at the state or federal level. DOJ's U.S. Attorneys typically prosecute federal criminal

¹²⁴ DOJ INS, *Detention Operations Manual, Detainee Classification System*, February 11, 2002.

¹²⁵ Immigration judges' decisions in these cases are reviewable by DOJ's Board of Immigration Appeals upon appeal.

¹²⁶ Aliens may be judged inadmissible on a number of grounds articulated in the *Immigration and Nationality Act*. Inadmissibility may be determined on the basis of health conditions, criminal history, economic welfare, or national security concerns, among others.

cases involving illegal aliens, although OPLA sometimes assumes the role of prosecutor in these cases.

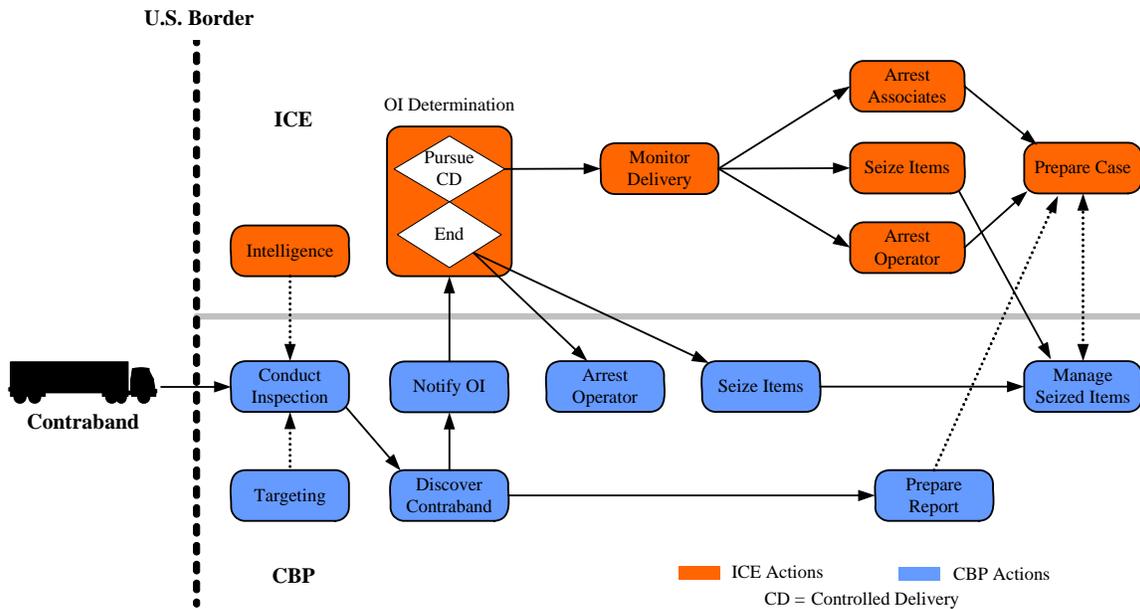
Preparation for Removal. After an immigration judge issues a final order of removal, it is DRO's responsibility to ensure that the order is executed. In many cases, aliens with final orders of removal are not in DRO custody and must be located and apprehended. When in custody, DRO actively coordinates the logistics and transportation necessary to remove the alien. Removal preparations often involve substantial coordination with foreign governments. Foreign consulates and embassies are notified when DRO plans to repatriate one of their citizens. DRO also works with foreign governments to obtain travel documents for the alien. Finally, DRO notifies other nations when travel arrangements call for a deportee to travel through an airport in their country.

Removal. DRO transports the alien to the point of embarkation, usually an airport. Airline transportation costs are borne by DRO. In some cases, DRO charters flights to remove a large number of aliens to a particular country. When necessary, as is often the case with criminal aliens, DRO also escorts the alien back to his or her country of record.

Scenario Two: Contraband Transiting Ports of Entry

CBP's inspection activities follow a similar process and trigger similar engagements with ICE regardless of whether the inspection occurs at a seaport, airport, land POE, or international mail processing facility. To illustrate the relationship between CBP and ICE in these cases, we have chosen to illustrate the inspection and investigative process surrounding contraband shipments arriving by tractor trailer at a land POE.

Scenario Two: Contraband Transiting Ports of Entry



Intelligence & Targeting. To maximize the impact of its inspection efforts, CBP’s OFO uses intelligence and targeting information to help determine which conveyances, in this case tractor trailers, it should subject to more intensive scrutiny. Targeting performed at the national level by CBP’s NTC relies heavily on advance electronic filings from importers. Importers or brokers acting on their behalf can submit entry documents to CBP through its Automated Broker Interface system before their goods arrive at the POE for inspection.¹²⁷ NTC analyzes the electronic filings submitted through the Automated Broker Interface system and determines which conveyances to target for a more extensive inspection process. NTC determinations are based on intelligence trends and information, some of which comes from ICE. CBP also uses other automated systems to select conveyances for intensive inspection.¹²⁸ In addition to tracking trends and responding to related anomalies, these systems add an element of randomness to their selection process. Further targeting efforts occur at the local level, where OFO staff may collaborate with ICE investigators to identify high-risk conveyances.

¹²⁷ Entry documents include bills of lading, completed entry forms, invoices, and documentation that the goods and driver have the right to enter the United States.

¹²⁸ In the case of cross-border trucking, CBP uses its Border Release Advanced Screening and Selectivity (BRASS) program and Pre-Arrivals Processing System (PAPS) to perform advance targeting and selection functions.

Inspection. The CBP customs inspection process has twin objectives. It aims to facilitate the flow of legitimate cross-border commerce while simultaneously barring the entry of illegitimate goods. The inspection process consists of a primary and secondary inspection process. During primary inspection, vehicle operators arriving at a land POE present inspectors with paper copies of their entry documents. Inspectors then review the documents, confirm that the documents are in order and consistent with advance electronic submissions, and question the driver. Inspectors may determine that the conveyance is admissible, collect applicable duties and fees, and release the truck into the United States. Alternatively, primary inspectors can refer a vehicle to secondary inspection if it has been targeted or if the inspector is not satisfied with the information he or she received from the vehicle operator.

Secondary inspection efforts may include closer examination of entry documents, the unloading and examination of truck cargo, inspection of the cargo by canine teams, or the use of non-intrusive inspection (NII) technologies. CBP uses a range of x-ray, gamma ray, and radiation detection devices to perform non-intrusive inspections. NII results may, in turn, trigger a physical examination of the cargo.

Discovery of Contraband. Many kinds of contraband illegally cross the United States border every year. Illegal contraband may consist of a wide variety of items, including: counterfeit goods, incorrectly manifested cargo, child pornography, and illegal narcotics.

Notification of OI. After discovering contraband, CBP's inspectors are to notify ICE's OI at the earliest possible opportunity. The timeliness of this notification is critical and can directly impact the range of enforcement options available to OI.

OI Determination. After receiving notification from OFO inspectors that contraband has been detected, ICE's OI chooses from among several possible enforcement options.

- *Pursue a Controlled Delivery (CD).* A controlled delivery is an investigative technique used to expand the impact of enforcement efforts by permitting criminal schemes to develop and implicate more criminal associates. During a controlled delivery, OFO inspectors permit known contraband shipment to continue across the border to its final destination while under ICE surveillance and control. The

effective execution of a controlled delivery can reveal a larger criminal organization and result in the arrest of the vehicle operator *and* his or her criminal associates, as well as the seizure of additional contraband and assets. Controlled deliveries, therefore, are preferred enforcement options for OI. OI's enforcement preferences notwithstanding, the potential for conducting a controlled delivery often hinges on the work of OFO's inspectors.

- *Conclude Enforcement Effort (End)*. After weighing the options above, OI may opt to draw a close to the enforcement effort and request that OFO arrest the vehicle operator and seize the contraband. OI may then interrogate the conveyance operator. In these cases, OI bears responsibility for subsequent investigative and case preparation work.

Prepare Inspection Report. Reports and evidence from the conveyance inspection process are often necessary to effectively prosecute cases involving cross-border contraband shipments. The CBP inspectors who discovered the contraband sometimes are required to prepare reports with detailed information on their inspection activities leading up to the discovery of the contraband, as well as information about the type of contraband they discovered and where they encountered it. Inspectors' photographs of the conveyance and contraband often are included in these reports.

Manage Seized Items. After either ICE OI or CBP inspectors seize contraband or related assets (e.g., the vehicle used for smuggling the contraband), custody of much of the property is remanded to the Fines, Penalties and Forfeitures (FP&F) unit of CBP OFO. This OFO unit stores and manages seized property and assets. FP&F enforces strict observance of rules of evidence and documents and safeguards chain of custody. FP&F liquidates or destroys seized property that is no longer required for investigative or prosecutorial purposes.

During the course of its investigation and case preparation efforts, OI often requires access to seized property held by FP&F. In order to conduct a thorough investigation, OI is thus dependent on a good working relationship with FP&F. OI is also reliant on FP&F's effective handling of case evidence for successful prosecution of OI cases, as damaging or tampering with evidence can result in an acquittal. FP&F is, in turn, dependent on cooperation from OI investigators to ensure that evidence is properly handled and treated in compliance with applicable regulations.

Prepare Case for Prosecution. After completing their investigation into the contraband smuggling operation, OI investigators assemble and prepare case information and investigative materials for the prosecution of individuals linked to contraband smuggling operations. Investigators assemble and prepare statements from the defendant, reports on witness interviews, crime scene photos, and records of seized items. OI case preparation work, which may be performed in coordination with OPLA attorneys, often depends on significant coordination with OFO's FP&F to access seized items that may be entered into evidence. In addition, OI's case preparation efforts often rely on satisfactory reporting from the CBP inspectors who initially discovered the contraband.

We conducted this review of BTS and its components, CBP and ICE, at the request of the Chairman of the Senate Committee on Homeland Security and Governmental Affairs. The objective of our review was to answer the following questions:

- Should CBP and ICE be merged into one organization? What makes a merger attractive or unattractive?
- What are the current organizational, operational, and relational problems that must be corrected and will a merger achieve the correction?
- What is the role of the Border and Transportation Security (BTS) headquarters element?

Our fieldwork was conducted from February 2005 to June 2005. During this four-month period, we conducted over 300 interview sessions and spoke to over 600 individuals. Among these individuals were BTS, CBP, and ICE personnel in the field, as well as senior leadership and program managers at headquarters in Washington, DC. Our interviewers traveled to Buffalo, Chicago, El Paso, Miami, New Jersey, New York, Phoenix, San Diego, San Francisco, and Tucson in order to observe air, land, and seaport border security operations. We visited more than 63 different CBP and ICE field locations. At those locations, we interviewed legacy INS, legacy USCS, and newly hired employees of CBP and ICE. Additionally, we interviewed congressional staff; personnel from other federal agencies including the Executive Office for the United States Attorneys as well as some United States Attorneys; knowledgeable individuals from the Brookings Institute, Council on Foreign Relations, Heritage Foundation, and the Rand Corporation; and, leaders of the unions representing employees in CBP and ICE: American Federation of Government Employees, National Treasury Employees Union, and National Border Patrol Council.

We reviewed documents and statistics on the legacy INS and USCS and examined materials related to the formation of BTS, CBP, and ICE. We examined standard operating procedures and other procedure manuals, budget plans, and performance statistics from FY 2000 through FY 2005. This included analysis of statistics on arrests, apprehensions, detentions, and

deportations during these fiscal years.¹²⁹ Lastly, we examined reports from the Government Accountability Office, Internet websites, and news articles.

This review was conducted under the authority of the Inspector General Act of 1978, as amended, and according to the *Quality Standards for Inspections issued by the President's Council on Integrity and Efficiency*.

¹²⁹ Due to technical and organizational changes in CBP and ICE, requisite data were not always available. In many other cases, we could not identify clear performance trends because CBP and ICE have been in operation for only a short period.

Appendix H
Management Response to the Draft Report

Deputy Secretary
U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

October 17, 2005

The Honorable Richard L. Skinner
Inspector General
Department of Homeland Security
Washington, DC 20528

Dear Mr. Skinner:

The Department of Homeland Security (DHS) has conducted a careful review of your draft report, *An Assessment of the Proposal to Merge Customs and Border Protection with Immigration and Customs Enforcement*. DHS's leadership team found much that is valuable in your report. We have already implemented some of your recommendations, and others will soon be adopted, modified or otherwise addressed.

However, we strongly disagree with your core conclusion that Customs and Border Protection (CBP) should be merged with Immigration and Customs Enforcement (ICE).

In driving to this conclusion, the report lacks analytic rigor, and it is tainted by factual errors. The proposed organizational solution would, in my view, actually compound many of the very problems that you identify. It would yield a protracted period of organization churn, thus undermining operational effectiveness at CBP, ICE and the Department at large.

Your introduction explains that "this report is based largely on testimonial evidence" of CBP and ICE field employees, including senior managers in the field. You describe "a crescendo of frustration" among employees. This frustration by DHS employees is certainly real, and there are important, thorny management problems raised by it.

The testimony for your report was gathered at a time when the crescendo of frustration was also being driven in part by a financial crisis at ICE. The ICE financial crisis seriously constrained hiring and operational flexibility, resulting in a morale-draining imposition of travel restrictions, compensation restrictions and other meaningful belt-tightening. That undoubtedly had ripple effects into relationships with CBP, which was not suffering such shortfalls.

So what to do? Immediately following his confirmation earlier this year, Secretary Michael Chertoff launched a review of DHS's mission and performance -- the Second Stage Review. In doing so, we too heard from many voices among our DHS colleagues that advocated meaningful change. In July, the Secretary outlined a plan to make improvements across DHS, including management solutions that will strengthen CBP and ICE coordination. Not all is yet fixed, nor has every problem yet found a solution. But we have a clear path ahead and a firm commitment to support effective coordination between CBP and ICE.

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An Assessment of the Proposal to Merge CBP and ICE

Let me say a word about the major areas of focus of your report. First, an important part of the report deals with the Border and Transportation Security (BTS) directorate. You note that the Secretary's decisions "to eliminate BTS as an intervening directorate and transfer the Federal Air Marshal Service (FAMS) to the Transportation Security Administration (TSA) are consistent with our views."

Second, you make recommendations for a systematic overhaul of how CBP and ICE coordinate regarding the apprehension, detention and removal of illegal aliens. We basically concur with your assessment. In August, the Secretary convened an interdepartmental and interagency task force that conducted comprehensive process mapping and analysis to improve our detention and removal operations. Co-chaired by a senior CBP manager and a senior ICE manager, the group also carefully reviewed your draft report. Building on this effort, DHS recently began to implement far-reaching changes that will improve bottom-line performance.

Third, you raise significant issues about coordination among CBP and ICE regarding both intelligence sharing and investigative operations. Secretary Chertoff also shared those concerns, and they in part animated the specific structural changes announced last July regarding DHS operational coordination and intelligence sharing.

Finally, you have articulated a concern about overburdening the Deputy Secretary and the Secretary by eliminating BTS without merging CBP and ICE. On this score, the Secretary's management approach has been to increase accountability while eliminating layers of bureaucracy. The number and size of the direct reports at DHS is consistent with other large federal departments. As you know, we have already eliminated or consolidated some number of direct reports to the front office that previously existed at DHS. All things being equal, this will allow us to focus more on the Department's seven operating components.

DHS is still at an early stage in its evolution. If we must balance some additional front office engagement to become more nimble, non-bureaucratic and decisive, I am comfortable that the national interest rests with doing so.

I have attached to this letter a document produced by CBP, ICE and DHS staff that offers more specific observations about the text of your report. You are absolutely right, however, in concluding that our disagreement on whether to merge CBP and ICE does not diminish its considerable value. We intend aggressively to continue working the management and operational issues you have raised.

Sincerely,



Michael P. Jackson

Attachment

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

October 17, 2005

MEMORANDUM FOR: Michael Jackson
Deputy Secretary
Department of Homeland Security

FROM: Steven J Pecinovsky *Steven J Pecinovsky*
Director, Departmental GAO/OIG Audit Liaison Office
Department of Homeland Security

Cecelia Neglia *Cecelia Neglia*
Director, GAO/OIG Audit Liaison
Office of Policy and Planning
Customs and Border Protection

E. Eddie Carlisle
Eddie Carlisle
Section Chief, ICE Audit Liaison Division
Immigration and Customs Enforcement

SUBJECT: Comments on the Office of Inspector General's Draft Report
Entitled "An Assessment of the Proposal to Merge Customs
and Border Protection with Immigration and Customs
Enforcement"

Attached is the information you requested regarding the Office of Inspector General's draft Report entitled "An Assessment of the Proposal to Merge Customs and Border Protection with Immigration and Customs Enforcement." This response represents the collective work of an intra-departmental working group comprised of senior staff tasked by Commissioner Robert Bonner and Acting Assistant Secretary John Clark, as well as, BTS and DHS Headquarters staff, to review the IG report. As you will note in the attached document, this working group reviewed the report in extensive detail. Based on this review, we have concluded that the report is incomplete in its assessment and analysis and includes a number of inaccuracies and misstatements. At the same time, it is deficient in its discussion of the positive steps that ICE, CBP, and BTS have undertaken over the past several years. We have summarized our more specific comments in the attached document. We request that this document be published with the IG report if our comments are not incorporated into the body of the final report.

DHS Review of the Report

Department officials, including representatives from ICE, CBP, and BTS, thoroughly reviewed the Inspector General's report. The following represents a page-by-page analysis, including areas where Department officials believe that the report either misrepresented facts or relied too heavily on anecdotal evidence. We have also provided, where appropriate, statistics and data that counter some of the report's conclusions.

Executive Summary

Page 2: The first paragraph states: *"In so doing, we examined whether the difficulties we discovered arose with the implementation of the new organizational structure, or whether they were pre-existing conditions carried over from the former INS and USCS and inherited by the new organization."*

Although the report infers in the Executive Summary that it examined pre-existing difficulties, we did not find a careful analysis of such problems within the report.

Page 2: Footnote 3 states: *"ICE suffered over the past two years from funding shortfalls, resulting in training, travel, recruitment, pay, and awards shortages. In this report, we did not comment on or consider complaints and problems that appeared to be solely attributable to ICE's financial condition."*

As the report notes, since the merger in March 2003, ICE was operating under constraints due to budgetary shortfalls. This included but was not limited to the following: temporary cessation of training, delays in recruitment, distribution of awards, etc. The report fails, however, to capture the many ICE successes experienced during these very trying budgetary times. For example, ICE initiated an enforcement program targeting violent gangs, increased cooperative efforts with CBP, Field Operations and Border Patrol, and invigorated the Worksite Enforcement Program. Many of ICE's successful cases have resulted from partnerships between ICE and CBP Inspections or the Border Patrol. In addition, it is unclear how the drafters of the report distinguished between problems that resulted from the financial shortfall and those that resulted from the current organizational structure.

Page 3: The second paragraph states: *"The new arrangement meant that enforcement efforts that were initiated by CBP, for example, now had to be completed by ICE. ICE now depended on case referrals from CBP Inspectors."*

This statement represents a fundamental misunderstanding of the relationships that previously existed between the agents and inspectors and that continues to exist today. Simply put, the new organizational structure did not change the interdependency or referral process. Indeed, the processes have improved as they are now more streamlined. Before the Homeland Security Act, there were six types of officers – Border Patrol, INS Inspections, Customs Inspections, Agriculture Inspections, INS Investigations, Customs Investigations, and Detention and Removal. Now, all three Inspections branches and Border Patrol have been combined into two, to form the Office of Field Operations and the Office of Border Patrol. All investigators – INS and Customs – have been combined into one Office of Investigations at ICE.

Page 3: The fourth paragraph previously¹ stated: *"The division between CBP and ICE is now marked by a clear institutional barrier."*

¹ For simple ease of reference, we have changed reference pages and paragraph numbers from the DHS response published in the first release of the report in order to reflect changes made by OIG in its final report. We have also

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To the contrary, all of the entities that were previously in different Departments – Department of Justice, Department of Treasury, Department of Agriculture, Department of Transportation, General Services Administration – are now housed under one umbrella, the Department of Homeland Security. In fact, it is more accurate to conclude that the “institutional barriers” were broken down. To that extent, the lines of communication, cooperation, and information-sharing have improved.

Coordination of Apprehension and Detention and Removal Operations

Page 4: The third paragraph previously stated (this text was deleted in the final report): *“Further aggravating this imbalance is a lapse in coordination between CBP and ICE, which has set the stage for ICE to direct traditional detention and removal resources toward interior enforcement efforts – a process that, if it is not carefully managed, may undermine traditional detention and removal operations that support CBP.”*

The report does not mention the great deal of coordination at all levels between CBP and ICE and Border Patrol sectors and Detention and Removal Operations (DRO) offices. For example, DRO and CBP currently participate in an Expedited Removal Working Group at the Headquarters level. Other established mechanisms of coordination include the Arizona Border Control Initiative (ABCI), the Expedited Removal (ER) program², and Operation Texas Hold ‘Em. Improved coordination between ICE and CBP on such initiatives have resulted in the detention of more apprehended aliens.

Indeed, in FY2004, DRO removed a record number of illegal aliens from the United States, posting approximately 162,000 such removals, including 77,000 non-criminals and approximately 85,000 criminal aliens. This reflects an *increase* in both non-criminal and criminal alien removals from FY2003, where 145,832 aliens were removed, including 67,700 non-criminals and 78,232 criminal aliens. This, in turn, was an increase from FY2002, in which 116,118 aliens were removed, including 46,502 non-criminals and 69,616 criminal aliens.

The rates of increase in removals are likewise significant:

Total Removals

2004 161,837 an increase of 11% over FY03
2003 145,832 an increase of 26% over FY02

noted where text changed (with a notation that the report “previously state...”), but kept the text that OIG used in its earlier draft report. We have not, however, substantively altered the response.

² On September 13, 2004, the Department of Homeland Security began implementing ER on a limited basis between POEs. Initially, ER was implemented in the Laredo and Tucson sectors. It was subsequently expanded along much of the Southwest border (excluding some areas in Texas). This expanded ER applies to aliens who have no valid entry documents or who have fraudulent travel documents who are apprehended within 100 air miles of the border, and who cannot demonstrate that they have been present in the U.S. for over 14 days following their illegal entry. Expanded ER has primarily been directed towards third-country nationals (nationals of countries other than Mexico and Canada) and to certain Mexican and Canadian nationals with criminal histories, involvement in alien smuggling or a history of repeated immigration violations. As of August 1, 2005, 28,493 aliens were placed into ER proceedings between POEs. Of those, 14,388 were Mexican aliens who are almost always processed and removed to Mexico in the same day. Of the remaining 14,105 aliens, 9,745 have been removed to date. (In comparison, in FY 03, the last date for which statistics are available, there were 43,248 aliens processed under ER at POEs. At the time, that represented 23% of all formal removals.)

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2002 116,118 an increase of 7 % over FY01
2001 108,263 an increase of 8% over FY00
2000 100,370 an increase of 9% over FY99

Criminal Removals

2004 85,583 an increase of 9% over FY03
2003 78,232 an increase of 12% over FY02
2002 69,616 an increase of 1.5% over FY01
2001 68,600 an increase of 4% over FY00
2000 65,912 an increase of 3% over FY99

Non-Criminal Removals

2004 76,254 13% increase over FY03
2003 67,600 45% increase over FY02
2002 46,502 17% increase over FY01
2001 39,663 15% increase over FY00

Working groups on border enforcement and immigration policy are thinking through comprehensive reforms and strategies. Plans are also underway for local working groups in the 23 DRO Field Offices, to address routine and extraordinary coordination issues in the field with CBP. These working groups will be able to discuss planned operations and support for operations. They will focus on detention priorities established by the Department and seek to allocate limited detention resources, among competing enforcement priorities. In addition, DRO will, through weekly teleconferences, monitor the progress of the Field Office working groups to provide guidance and uniformity nationwide.

Moreover, DRO, CBP, BTS, and the Department of State, participate in the U.S.- Mexico Repatriation Technical Working Group, which has recently developed a template for local arrangements on the safe and orderly repatriation of Mexican nationals. The template has been negotiated with the Government of Mexico and will be used as the basis for a pilot program to be conducted in Chicago and El Paso.

At the same time, increased coordination is paramount and DHS is actively thinking through ways to enhance that coordination.

Page 4: The second paragraph previously stated: *“In the past, INS detention and removal resources were detailed to support apprehending components by providing transportation, guard duty, and basic processing of aliens. At BTS’ instruction, some of this support continues. According to CBP, however, the level and quality of support has declined.”*

This is not the position of CBP. To the contrary, CBP disagrees with this apparent employee statement. It represents, however, a larger problem inherent within the report. Namely, the report often implies that a particular position reflects the component’s view when, in fact, it is the view of an employee.

Coordination of Investigation Operations

Pages 4 and 5: The report states: *“Now, many CBP employees report that ICE no longer accepts as many case referrals from CBP inspectors and Border Patrol agents . . . Additionally, many ICE investigators reported that investigative coordination between CBP and ICE is declining because CBP increasingly refers cases to other investigative agencies . . . Due to ICE’s less frequent acceptance of case referrals, interagency competition, growing mistrust, and an interest in receiving detailed feedback on case progress, CBP is referring more cases to the FBI, DEA, and local law enforcement authorities for investigation without first notifying ICE.”*

The facts underlying this statement are not true.

Inferences are made several times in the report that ICE refuses to accept CBP referrals and that CBP, as a result, has increased its referrals to various federal, state and local law enforcement agencies. The report fails to provide statistical data to support this statement. Instead, the report relies solely on anecdotal evidence provided by less than 1% of the total workforce of both ICE and CBP. Instead, the report cites customs-related data without including immigration data, thus failing to account for a primary mission of both agencies.

On pages 47 and 48, for example, the report only uses customs-related case categories 02-13 to draw its conclusion about decreased CBP to ICE referrals. It did not include any immigration-related case categories. To fully encapsulate CBP referrals to ICE Office of Investigations (OI) (and hence cooperation between the two agencies), OIG should have included all case categories worked and investigated by ICE OI, including case categories 20-32 for FY 2004 and categories 14-19 in FY 2005. These include, among other categories, immigration referrals, document fraud cases, alien smuggling cases, money laundering cases, and strategic trade cases.

<u>FY</u>	<u>1st Qtr</u>	<u>2nd Qtr</u>	<u>3rd Qtr</u>	<u>4th Qtr</u>	<u>Total</u>
2003	2,740	2,923	2,489	2,386	10,538
2004	2,652	3,145	2,697	2,827	11,321
2005	2,609	2,752	2,644	2,421	10,428

This fuller accounting presents a different picture of the cooperation between the two agencies. We note there was a decline in the last quarter of 2005, but that this is in part due to Hurricane Katrina, given that ICE’s New Orleans office, which is one of its larger offices, was shut down and that CBP and ICE employees from around the country were involved in the hurricane response and recovery effort.

It is also important to note that, with respect to just the customs-related cases, the data does reflect that, although there was a gradual decrease in customs-related CBP referrals to ICE OI during the period from the 2nd Qtr of FY2003 through the 1st Qtr of FY2005 of 7%, the *total* number of customs-related referrals from all source types indicates a gradual decrease during the same period of time of 10%. Given that all customs-related referrals decreased, it is not at all surprising that there was a proportionate decrease in CBP referrals to OI.

CBP continues to make referrals to other agencies, under long-established and pre-existing procedures. But none represents a change in policy or increase in the referral of cases to other investigative agencies. For example, investigations of aliens with possible ties to terrorism and those

identified as “Special Interest Aliens” (SIAs) operate under specified procedures. CBP cases that present potential terrorism connections are referred to the Joint Terrorism Task Forces, in which ICE actively participates. Indeed, in practice, JTTFs often respond to these referrals by sending ICE agents to investigate the cases. CBP frequently contacts the ICE representatives to the JTTF directly. Moreover, it is CBP policy that CBP personnel contact ICE directly when the JTTF does not respond to a particular referral. This referral practice does not represent a change or decline in investigative referrals to ICE. Similarly, with respect to SIA referrals, CBP contacts the JTTFs directly and often working with ICE through that venue.

It should be noted that before the creation of CBP in March 2003, legacy Customs inspectors referred all interdiction of illegal drugs and contraband at the POEs to Customs’ Office of Investigation for follow-up investigation. CBP Officers *continue to refer* all POE interdictions to ICE’s Office of Investigation. There has been no change in this policy and no decline in these referrals. Moreover, CBP continues to refer all trade fraud and Intellectual Property Rights theft cases to ICE for investigation.

In addition, with respect to narcotics cases, the Office of Border Patrol (OBP) currently operates under a Memorandum of Understanding (MOU) between legacy Immigration and Naturalization Service (INS) and the Drug Enforcement Agency (DEA). Pursuant to that MOU, OBP is required to first notify DEA of any narcotic seizure for possible investigation. If DEA declines to proceed with the case, OBP may then contact ICE (or State or local law enforcement) for follow-up investigation or disposition. This is the procedure followed prior to the creation of CBP and it has not resulted in any change or decline in investigative referrals.

Coordination of Intelligence Activities

Pages 5 and 6: The report previously stated: *“Coordination of intelligence activities between CBP and ICE has also suffered. . . . Despite their shared intelligence needs, the two organizations have separate intelligence structures and products. Intelligence coordination between CBP and ICE at both the headquarters and field levels can best be described as disjointed.”*

We agree that both ICE and CBP intelligence need to improve coordination and intelligence sharing. However, the report entirely misses the point that, unlike today, the legacy organizations did not share their databases and, in fact, were in different Departments that did not have mechanisms to robustly share information. As described in further detail below, both agencies are working to improve coordination and collaboration on intelligence in a number of ways, including the sharing of law enforcement information, shared intelligence products, and regular participation in each other’s intelligence briefings:

- Significant intelligence sharing that supports operational cooperation, for example, occurs daily at the National Targeting Center (NTC), which CBP formed in the aftermath of the 9/11 attacks to address the need for proactive targeting in the terrorist travel environment. The NTC operates on a 24 x 7 basis in both a secure and non-secure environment and supports information-sharing among law enforcement agencies, including ICE, as well as Transportation Security Administration (TSA), Federal Air Marshals Service (FAMS), Federal Bureau of Investigation (FBI), and the Food and Drug Administration. ICE personnel stationed at the NTC review information related to specific watch-listed subjects and other threat information and then provide assessments of potential threats to ICE JTTFs in the field. Special operations are coordinated between CBP and ICE to ensure appropriate personnel are advised of specific intelligence regarding potential threats. Documentary intelligence information obtained by CBP from watch-

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listed subjects encountered at the POEs is regularly provided to ICE investigations for analysis and development of investigative leads.

- CBP Intelligence has access to the ICE Intel Fusion website and TECS, which contains the majority of ICE intelligence reporting. Both agencies upload unclassified reports into TECS. And CBP officials are on the distribution list for all ICE Intelligence Information Reports (IIRs). ICE employees stationed at DHS have access to CBP Intelligence Reports (HSIRs).
- Raw terrorist-related information discovered or encountered by CBP frontline officers and agents is reported immediately through significant incident reports to CBP Headquarters to the Department and its various entities, including ICE, pursuant to Departmental procedures. There is also a feature in TECS that allows inspectors to communicate important information to ICE agents.
- Upon request, CBP sends Special Research Reports to ICE in support of ICE investigations.
- CBP Intel unclassified and classified reports are uploaded into the classified system at NCTC, which ICE analysts with the appropriate clearance have access to.
- ICE and CBP Intelligence offices send representatives to each others' daily intelligence briefings.
- ICE and CBP exchange information regarding border smuggling on a daily basis through the Border Patrol Field Intelligence Center (BORFIC) and other field components.
- When operationally necessary, the ICE Arms and Strategic Technology Intelligence Unit interacts regularly with CBP Intelligence, CBP officers at the POEs, and the National Target Center, regarding the interdiction of outbound licensable U.S. goods and technology.
- ICE provides an analyst on a weekly basis in support of CBP seaport initiatives to assist and ensure continued exchange of information with CBP Sea Passenger Analytical Team (SeaPAT), the Anti-Terrorism Contraband Enforcement Team Advanced Targeting Units (A-TCET ATU).
- In the field, CBP and ICE work cooperatively on joint intelligence teams. Examples are described in more detail below.

Finally, enhanced coordination, moreover, will occur at the Departmental level with the advent of the more robust Office of Intelligence and Analysis recently announced by the Secretary.

Page 6: The second paragraph previously stated: *“Most CBP personnel lack the required level of security access to retrieve critical information entered into TECS by ICE. As a result, valuable ICE information about criminal trends and threats is effectively withheld from most CBP employees, especially from those in the field.”*

Inspectors at the port of entry have never had unrestricted access to TECS. For both ICE and CBP, the practice continues to be that access to higher levels of TECS is limited to a need-to-know basis. There are operational and integrity reasons why all CBP and ICE personnel should not be accorded full and unrestricted access. There are CBP personnel, however, who have the highest levels of access. In addition, all CBP agents and officers can query TECS, albeit with different levels of access. Where full information is not provided, users are given contact

information of appropriate agents who can provide them with the appropriate data that will meet their needs.

Page 6: The fourth paragraph previously stated: *“The current organizational structure has created new intelligence stovepipes that could have significant national security implications. Intelligence and other information CBP and ICE could use to enhance their operations and improve overall border security is sometimes retained on the other side of the interagency wall.”*

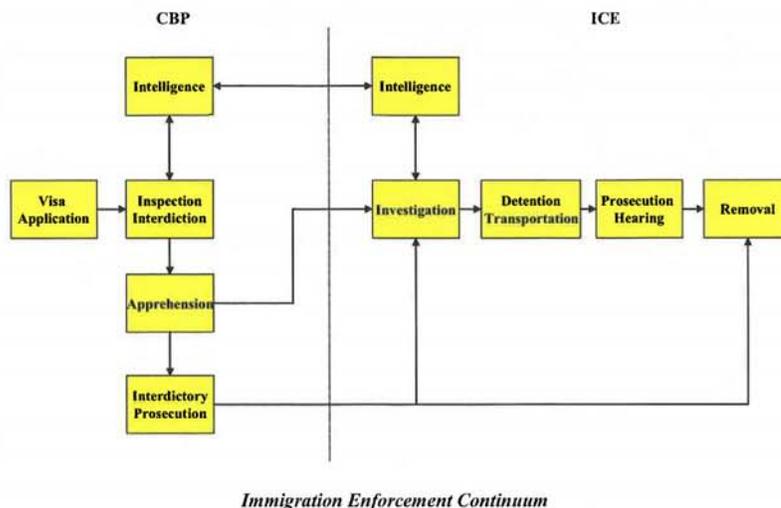
We agree that enhanced coordination among the Department’s intelligence and information generators is necessary. However, as announced in the Secretary’s Second Stage Review reorganization, enhanced cooperation and information sharing must occur across the entire Department. Therefore, in addition to the joint efforts that are already underway between these two agencies, the Department’s Chief of Intelligence will work to ensure that DHS is fusing information from all components, including ICE and CBP. This organizational change within the Department will focus on increasing information sharing between components and the development of intelligence products that incorporate all-source information. Coordination difficulties identified by the report will be addressed, therefore, by the fusion of information across the Department, rather than from the merger of two of its operational components. Incidentally, it is important to note that the mechanism the Intelligence Community uses to disseminate valuable intelligence information is the IIR (Information Intelligence Report). In 2004 DHS drafted only 24 IIRs. In 2005, over 700 have been issued to date.

The Continuums with Customs and Border Protection/Immigration and Customs Enforcement

Page 23: The first paragraph states: *“The long-standing customs and immigrations enforcement continuums were broken. . . . The institutional barrier created significant coordination and communication problems between CBP and ICE that affect operations and information sharing.”*

The statement and accompanying diagram are misleading. In fact, the Homeland Security Act strengthened the enforcement continuums by providing ICE and CPB employees and officers with the full spectrum of border enforcement authorities. And the Act eliminated pre-existing barriers. One agency was designed for primarily interdiction functions (CBP), while the other was designed to perform investigative functions (ICE).

The diagram fails to reflect, among other things, that apprehension and seizures boxes should be combined, as this is a shared responsibility that is supported by ICE and CBP policies, procedures, and MOUs that are reflected by necessity in the field. Similarly, the prosecution boxes should be connected given that 23% percent of ICE’s cases are CBP cases.



Coordination of Apprehension and Detention and Removal Operations

Page 25-38: The report describes at length the problems with national and field coordination in the area of apprehension and detention removal operations.

The following is a discussion of each of these concerns:

Problems with National Coordination

While it is true that much better coordination is needed for budget and operational planning between those elements that apprehend illegal aliens and DRO, this effort has improved significantly compared to historical levels. As an example, in Spring 2005, ICE and CBP coordinated closely to address the increase in traffic of third-country nationals (countries other than Canada and Mexico) witnessed along the Southern border. An interagency working group, including representatives from BTS, ICE, CBP, CIS, and Civil Rights and Civil Liberties, drafted a plan for using Expedited Removal. The group took into account both the operational requirements for deterring entry by third-country nationals and the resources available to DRO, among other factors. Once implemented in the field, CBP, ICE, and BTS monitored operations to identify any modifications necessary to meet altered operational needs, address resource constraints, and increase capabilities due to additional resource availability.

As part of a longer term effort, Secretary Chertoff has emphasized that the efforts of ICE to detain and remove are a part of the same enforcement continuum as CBP's efforts to interdict and apprehend. The availability of detention capacity is a function of planning across the immigration enforcement continuum. Planning to increase apprehensions necessarily must include planning to increase detention capacity and removal resources if the immigration enforcement effort is to be successful. CBP and ICE, led by DHS, are working closely to

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coordinate enforcement of this planning effort. These efforts include close coordination to identify opportunities to improve efficiencies within the enforcement system.

In recognition that the overall success of the Department is contingent upon both components' efforts, the Department has initiated the development of a resource plan that identifies the coordinated capabilities, operational work flow, and resource needs of both components. An integrated resource allocation model will help DHS make better decisions among alien management investments between ICE and CBP. The Department is presently making budget decisions based on the likely pace of CBP and ICE apprehensions, and the subsequent detention and processing needs. That is not to say that all CBP apprehensions can be detained and more effectively processed; integrated resource decision making is just one part of the process in making systematic improvements to alien management.

It should be noted that in working to fix ICE financial challenges this year, DHS implemented plans not only for corrective resource reallocation and enhancements needed to fix ICE base needs, but also to ensure that ICE has the capacity to adequately detain and process illegal aliens apprehended by CBP.

CBP and ICE also convene quarterly to develop, coordinate, and implement enforcement operations, which help address immigration enforcement threats. Most importantly, DRO has incorporated CBP into their strategic plan titled, "*Endgame*." In the plan, DRO has identified CBP as a primary internal customer and enforcement partner in their work to diligently identify, locate, apprehend, process, and remove aliens who violate this nation's immigration laws. Consistent with *Endgame*, DRO is developing a comprehensive capacity planning program that will assist in identifying future detention resource requirements. The capacity planning effort will incorporate all apprehending entities (including CBP) and will serve to promote coordination across the immigration enforcement continuum.

In addition, in October 2004, ICE and CBP developed joint detention prioritization guidance. *See* October 18, 2004, Detention Prioritization and Notice to Appear Documentary Requirements (hereinafter Detention Prioritization Guidance).

Problems with Field Coordination

The Detention Prioritization Guidance has been in use by the field since October 2004 to ensure enhanced coordination. The existing guidance reflects the operational priority placed on detaining aliens that exhibit risk factors for the terrorist threat. All aliens from countries of special interest who are apprehended by the Border Patrol are referred to CBP-NTC for screening, the results of which are shared with ICE liaisons at the NTC as well as with DRO upon the detention request. A determination regarding detention is then made based upon the mutually developed detention priority guidance. In many cases, these decisions are affected by available bed space.

In addition, as an example of increased field cooperation, Operation Texas Hold 'Em, which was developed jointly by DRO and Border Patrol, resulted in an increased ability to detain and remove Brazilian nationals apprehended between the POEs through a more efficient use of removal procedures. As a result of their efforts, the average detention time for Brazilian nationals prior to removal is five days, as compared to the national average of 26 days for a normal expedited removal.

Furthermore, even before the beginning of the Arizona Border Control Initiative (ABCI), DRO/ICE Office of Chief Counsel (OCC) and CBP/OBP in Arizona developed a combined

tactical detention strategy to address the growing number of Brazilians entering illegally through Arizona. The success of this operation continues. The number of Brazilians in detention in Arizona is significantly lower today and continues to remain so.

There is no question that improvements must be made in this area. However, efforts are underway to do so, through Headquarters coordination.

Page 31: The first paragraph previously stated: *“Within DHS, DRO’s field management structure is no longer effectively subordinate to CBP’s field offices.”*

DRO was never “subordinate” to inspections (CBP OFO) or Border Patrol. Indeed, although the INS previously operated under a decentralized regional structure, both CBP and ICE have established stronger nationally-directed prioritization which has enabled a greater utilization of resources.

Page 37: The second paragraph previously stated: *“Achieving this goal is more unlikely when only one of the two parties may participate in the decision-making [regarding DRO allocations.]”*

This implies that CBP priorities are not incorporated in DRO priorities. However, DHS is actively working, with IG participation, to ensure that CBP and ICE are working together with the Department to set DRO operational resource allocations.

Coordination of Investigation Operations

As a general matter, the IG criticizes, at length, the lack of coordination in operations between the two components, yet fails to mention joint initiatives such as the Arizona Border Control Initiative (ABCI), which was a successful program overseen by the Department within BTS. ABCI’s successes included documented increases in arrests and seizures of narcotics, vehicles, smuggling monetary proceeds and weapons in the operating area, which resulted in a reduction in smuggling and other violent crime in Phoenix.

As described below, ICE and CBP have worked hand-in-hand in this initiative, along with other DHS components:

- **Operations Integrations:** DHS established an Integrator whose role was to prepare a joint concept of operations and action plan. The Integrator provided DHS Headquarters and other law enforcement partners with regular unified reports from the field which provided a common operational picture of the actions of CBP, ICE, TSA, and State, Local and Tribal Law Enforcement agencies. The Integrator coordinated weekly conference calls between DHS agencies in the field and at the Headquarters level providing synergy in this operation.
- **Co-Leadership:** The Border Patrol’s (Chief Patrol Agent) CPA was designated as the Integrator, and ICE’s DRO Field Director was designated the Deputy Integrator.
- **New technology:** The resources of Science & Technology were coordinated to provide a new level of Unmanned Aerial Vehicle (UAV) support to our agents on the ground, focused exclusively in southern Arizona.
- **Planning:** Integrated planning meetings (ICE, CBP, BTS, Office of International Affairs (OIA), etc.) and briefings were held with Mexican officials at the start of the operation and during subsequent phases, including the Interior Repatriation program.

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- **Joint Operations:** Coordination between BTS elements and the Joint Terrorism Task Force (JTTF) improved through ABCI. ICE and CBP/Border Patrol joined resources to form six joint “DISRUPT” units. ICE’s Operation ICE Storm was part of the foundation for ABCI joint operations
- **Headquarters Coordination:** New levels of coordination and cooperation were achieved at the Headquarters level. This integrated concept was instrumental in providing joint briefings to Congressional staffs and to conduct joint planning with other law enforcement agencies, both in Washington, D.C., and in the field. Negotiations with Department of Justice (DOJ) resulted in the U.S. Attorney’s Office receiving additional staff members to increase prosecutions based on targeted guidelines.
- **Resources:** In spite of ICE’s budget challenges in FY04, the following additional ICE resources were brought to bear in support of the ABCI:
 - 625 additional bed spaces,
 - 13 additional buses
 - A mobile bus maintenance unit to transport illegal immigrants, and
 - Air Support: CBP Border Patrol Search, Trauma, and Rescue (BORSTAR) agents to provide medical and tactical support.

Page 40: In the second paragraph, the report notes that CBP and ICE have, in fact, established a formal mechanism to review interactions between ICE’s Office of Investigations and CBP’s Office of Border Patrol. The report further states: *“However, as we discuss in the next section, the ability of MOUs to effectively coordinate CBP and ICE operations is doubtful.”*

The report itself notes that mechanisms have been established to improve relations between the two agencies. This cooperation should be recognized by the IG as a positive development, rather than dismissed as one unlikely to succeed.

Page 41: The first paragraph states: *“Many CBP inspectors and Border Patrol agents, as well as some ICE investigators, reported that ICE investigators’ acceptance rate of CBP case referrals has declined significantly.”*

As noted above, the data simply does not support this conclusion.

Likewise, the remaining paragraphs in this section relay individual assessments that “the change” is a result of “turf battles” and “competition” between the two agencies. Again, given that overall acceptance of cases has in fact increased, “the change” itself can only be described as a positive development, rather than a problem caused by “turf battles.” The comments, however, are based on isolated perceptions and the statistical data disputes this IG conclusion. This graph was presented to the IG, and they have declined to use the data in the report.³

Similarly, the CBP Customs Referrals sections provides data on “customs referrals” but not on referrals of the full panoply of cases that ICE receives from CBP. It is simply misleading to draw conclusions on the basis of only selected categories of cases.

³ It should be noted that, due to the transition of INS and Customs into ICE, at the Second Quarter of 2003, the referral entries may contain a slight variance.

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Page 42: The first paragraph previously stated: *"In May 2005, more than two years after DHS was created, ICE was just beginning to address the significant challenges of integrating customs and immigration investigation programs . . . While the purported decline in ICE referral acceptance rates may be attributed to the 'us versus them' attitude that we discuss throughout this report, it may also have a genesis in the inadequate training ICE investigators have received."*

It should be noted that 97% of ICE agents were fully cross-trained by October 2004. In addition, ICE is developing more comprehensive cross-training programs. The IG was provided this data, but did not include it in the report. In addition, ICE has cross-pollinated its agents so that legacy INS and Customs agents are now teamed together in different investigative groups. To be sure, as with any transition, it takes time to fully integrate and educate professionals. But ICE has been aggressive in initiating a pro-active methodology to ensure effective enforcement actions.

Page 42: The last paragraph states: *"CBP inspectors and Border Patrol Agents said they increasingly refer cases to other law enforcement agencies . . . One Border Patrol agent said that competition for credit motivates Border Patrol supervisors to discourage Border Patrol agents from referring cases to ICE investigators."*

As described above, the premise is simply inaccurate. While it may be that "[a] few CBP inspectors and Border Patrol agents" will not refer cases to ICE, this simply cannot form the basis for concluding that cases are increasingly referred to other law enforcement agencies instead of ICE. As described in the response to page 5 of the report, the data reveals that this not true.

Pages 42-43: The report states: *"A Border Patrol manager said that he would never refer anything to ICE, but would refer cases to DEA and FBI because he believed that the FBI and DEA would conduct a better investigation than would ICE."*

While this one Border Patrol Agent may have conveyed his personal feelings, this is not the position of CBP or its Office of Border Patrol. Nor does it accurately reflect existing policy. In addition, OBP has always referred narcotics cases to DEA per the existing MOU. And the FBI does not normally accept alien smuggling cases without a nexus to terrorism. Therefore, the majority of smuggling cases encountered by OBP requiring follow-up investigation can only be referred to ICE.

Page 43: The third paragraph previously stated: *"According to a senior ICE manager, in order to avoid referring financial crime to ICE investigators, some OBP agents have incorrectly and intentionally classified cases as narcotics cases so that they could refer them to DEA."*

It must be noted that CBP's Border Patrol Agents rarely interdict just cash, as opposed to CBP's Office of Field Operations, which frequently intercepts and seizes outbound cash. In any event, it is CBP policy that all such cases be referred to ICE OI for a follow-up investigation. In addition, this represents an allegation from an ICE manager and does not include verifiable data.

Moreover, according to the MOU, any Border Patrol interdiction of money instruments valued at more than \$10,000 must be reported to ICE. It is likely that this anecdote occurred prior to finalization of the MOU in February 2005, in which case Border Patrol would have been following the appropriate procedure by turning the money over to DEA. If, on the other, the incident occurred after the MOU, then the ICE agent should have reported the incident through the dispute resolution mechanism established under the MOU.

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Page 46: The second paragraph previously stated: *“The ineffective coordination of investigative activities between CBP and ICE has significant ramifications. Some ICE investigations may have been impeded because of the lack of coordination and cooperation between ICE and CBP. In addition ICE’s unresponsiveness may have prompted CBP to expand its own internal investigative capability, creating even more coordination problems.”*

The Department will ensure that neither CBP nor ICE pursue duplicative functions, and instead continue to advance their distinct interdiction and investigative operational missions. It is correct that CBP is working to expand its cadre of senior officers to pursue prosecutions in certain, limited cases that arise at the POEs. However, while CBP officers are permitted to develop certain small cases, depending on complexity, they are obligated to turn the case over to ICE. As appropriate and where approved by a supervisor, CBP officers may continue to work on such cases under an ICE lead. The report fails to acknowledge the efforts of CBP and ICE to coordinate this effort through an existing working group that is capable of developing processes and protocols to be followed by these officers to avoid interference with an existing or potential ICE investigation. The focus of these senior officers, who are classified under the 1895 series, will be to pursue cases that do not present significant investigative complexity. It is incorrect, however, to imply that CBP developed this position because of dissatisfaction with ICE responsiveness.

Page 46: The last paragraph previously stated: *“When the number of investigations opened in response to a CBP referral fell in subsequent years, so did ICE’s narcotics arrests, indictments, convictions and seizures. While there may be many factors influencing this decline, this data combined with the volume of testimonial evidence suggests that degradation of border enforcement operations has occurred, in part, due to the ineffective coordination between CBP and ICE.”*

While the number of narcotics cases has decreased, it must be noted that the overall number of referrals has increased.

Similarly, the following are ICE’s total arrests, indictments, convictions, and seizures.

Fiscal year	Arrests	Indictment	Convictions	Seizures
2003	14,640	9,786	9,823	11,105
2004	25,578	15,275	13,658	12,739
2005	22,052	12,074	12,942	13,560

Total Investigative cases worked	Number of Cases
2003	26,063
2004	47,724
2005	52,028

Page 49: The second paragraph states, *“CBP has reconstituted the Border Patrol’s smuggling investigative capability, allowing Border Patrol agents to investigate some alien smuggling cases.”* Footnote 75 states, *“reformed ASUs do not have trained investigators assigned to them.”*

It is inaccurate to assert that CBP has reconstituted Border Patrol’s smuggling investigative capability. Groups of Border Patrol agents at some of the sectors do conduct short-term investigations in order to disrupt low level smuggling operations. These groups existed prior to the transition and, at that time, were not affiliated with Anti-Smuggling Units (ASUs). Currently,

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their efforts are addressed in the existing CBP-Border Patrol/ICE-OI MOU. Per the CBP/ICE MOU, OBP has primary responsibility for all cross-border and border related interdiction activities between the ports of entry, and ICE has primary responsibility for all investigations. The MOU allows for the OBP to initiate alien smuggling investigations as the operational need arises, provided that:

1. OBP notifies ICE that an investigation has been initiated or closed and provides the Enforcement Case Tracking System (ENFORCE) case number.
2. If officially requested by the respective ICE SAC, the OBP CPA remands the investigation to ICE. OBP may choose to remain an active participant in the investigation, but if ICE takes the lead for the investigation, any OBP agent that continues to participate in the investigation will do so under the direction of the SAC's designated lead for the investigation at hand.

Footnote 74 inaccurately states that "reformed" ASUs do not have trained investigators assigned to them. The only ASUs that exist are in ICE and consist of trained criminal investigators.

Finally, the report cites an example of an apparent joint ICE-CBP case. The agents identified in the example did not follow established policy and their conduct, if true, would subject them to disciplinary action.

Page 51: The third paragraph previously stated, "*While a number of factors may have contributed to this decline, the lack of effective coordination between ICE and CBP is likely a significant contributor to the decline in this invaluable type of law enforcement activity.*"

This conclusion is not corroborated by any empirical data.

Page 52: The second paragraph quotes a Chief Patrol Agent as commenting "*that the ICE investigators had a history of losing loads. He said that he did not want to risk having ICE investigators lose a controlled delivery that could potentially contain a weapon of mass destruction.*"

This statement is unduly inflammatory. There are protocols and procedures in place to safeguard against the loss of controlled deliveries. The very fact that a delivery is being monitored indicates that measures are in place to prevent loss.

Page 53: The third paragraph states, "*The MOU does not provide for an effective mechanism for resolving related disputes between ICE investigators and Border Patrol agents.*"

In the draft report, the IG asserts that there was no mechanism for resolving related disputes between ICE investigators and OBP agents. In the final report, after DHS pointed out the inaccuracy to the IG, without any apparent further analysis, the IG changed the report to note that there is a mechanism, but added that it is not "effective." The dispute resolution mechanism was utilized in the disputed case and the issue was resolved. Many of these issues, however, are resolved at the local level without further need to elevate them.

Coordination of Intelligence Activities

DHS agrees that enhanced coordination is imperative with respect to intelligence. It is for this reason that the Secretary announced, after his Second Stage Review, that the current Information Analysis Section will be elevated within the Department to be a direct report to the Secretary with a Chief Intelligence Officer who will work to integrate all of the components' intelligence and information. However, the IG

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generally asserts that CBP and ICE are not cooperating with respect to intelligence and information sharing. As described below, this is not accurate.

Page 54: The second paragraph previously stated that *“field intelligence structures rarely work together or exchange information.”*

This statement is inaccurate. As discussed below, ICE’s Field Intelligence Units (FIUs) regularly work with CBP personnel to exchange information.

Page 56: The third paragraph previously began: *“Very little has been done to promote information sharing between CBP and ICE.”*

The IG fails to acknowledge that information and intelligence sharing under DHS has improved significantly from the prior stove-pipes of Customs and INS. As the IG notes, and as is documented both above in comments to page 6 and below, DHS provided the IG with numerous examples of information-sharing between the components. However, the IG fails to recognize that these examples represent actual collaboration that did not previously exist. Indeed, on pages 62-63, the IG notes that DHS provided such examples, the IG states that “we could find no conclusive evidence that this collaboration ultimately materialized.” This simply makes no sense.

The following is a non-exhaustive list of tangible examples in which ICE FIUs, for example, have coordinated closely with CBP.

The North Central Field Intelligence Unit (NCFIU):

- NCFIU Management holds weekly meetings with U.S. Customs and Border Protection (CBP) management.
- An NCFIU Representative attends the CBP’s Commercial Enforcement Analysis and Response (CEAR) Team meetings.
- Representatives exchange information with Border Patrol officers regarding alien smuggling within their respective areas of operation.
- NCFIU recently participated in a teleconference at the request of CBP regarding a proposed operation.
- The Commercial Maritime Intelligence Team (CMIT) is dedicated to collecting, developing and disseminating commercial maritime intelligence, utilizing vessel, crew and cargo movement data to provide timely and proactive intelligence in support of CBP, ICE, the U.S. Coast Guard as well as Canadian and State and local law enforcement entities.

The Northeast Field Intelligence Unit (NEFIU):

- NEFIU works with CBP on a variety of projects including: Operation Capistrano, Operation Watchtower, and Operation Sea Hunt.
- NEFIU supports the Commercial Fraud Program through interaction with CBP. An NEFIU Analyst attends monthly meetings during which intelligence is exchanged regarding businesses/individuals importing counterfeit merchandise.

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The South Central Field Intelligence (SCFIU):

- Liaison analysts from SCFIU are assigned to share information in Houston and Dallas, TX, with CBP, the U.S. Coast Guard, CIS, TSA, and Secret Service.

The Southeast Field Intelligence (SEFIU):

- In support of CBP seaport initiatives, SEFUI provides an analyst on a weekly basis to assist and ensure continued exchange of information with CBP Sea Passenger Analytical Team (SeaPAT), Anti-Terrorism Contraband Enforcement Team Advanced Targeting Unit (A-TCET ATU).
- The SEFIU contributes to various operations involving CBP and/or CIS. Examples of such operations include: Operation Brown Recluse (CBP), Project Last Call (CBP), Operation "Masquerade" (CBP and CIS), and Operation Potpourri (CBP).

The Southwest Field Intelligence (SWFIU):

- SWFIU Works closely and on a daily basis with DHS partner agencies in Arizona, via its charter membership in the ABCI and BTS's Intelligence Task Force (ITF) Arizona, which includes CBP. All intelligence gathered pursuant to ABCI is fused by the ITF, which is under the operational control of the ICE/SWFIU.
- CBP is involved with SWFIU in the regional operations, designed to determine how, if at all, the number of illegal aliens, who traffic through those regions, increased as a result of neighboring BTS operations.

Page 57: The first paragraph on this page previously stated in part, "*Apart from entering intelligence reports and other information into TECS, neither CBP inspectors nor Border Patrol agents attempt to coordinate intelligence analysis or production with ICE.*"

Coordination of intelligence analysis is best accomplished by analysts. Generally, this occurs at the Department level and within the components' intelligence operations. In addition, CBP Officers, referred to as Inspectors, at POEs do not produce intelligence analysis.

Page 59: The first paragraph states, "*CBP employees said that they could not access some of the most important ICE intelligence and other information in TECS. Retrieving this information from TECS requires higher-level security access, which the vast majority of CBP employees do not have.*"

It must be noted that front line Inspectors have never had unfettered access to the highest levels of TECS in the past. Access to TECS is and has been based on a need-to-know basis. There are several different access control levels within TECS that restrict some records, such as criminal investigations, Grand Jury material, and Office of Professional Responsibility data. This is a common and acceptable approach in the law enforcement community. There is however an underlying data level that is available to all users, which is used as a pointer index. This data level is called Subject Records. Subject Records are entered and controlled by users within ICE and CBP. These Subject Records can be accessed by CBP and utilized as the pointer to contact the record owner for additional data.

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Contrary to the IG's assertion, many CBP officials have unrestricted access to investigative case files through the following programmatic areas: National Targeting Center (NTC), Free and Secure Trade, CBP Intelligence at Headquarters and field ICAT elements.

It is worth noting that since the creation of DHS, sharing of systems such as TECS and ENFORCE has increased.

Page 59: The last paragraph states that: *"Even though TECS was never designed to facilitate intelligence analysis, CBP and ICE use it for that purposes. TECS does not provide an effective forum for intelligence analysts to produce, retrieve, review, or share intelligence."*

It is true that TECS was never designed to facilitate intelligence analysis, as indicated in the report. However, several analytical platforms are currently used to mine data from the TECS warehouse. These effectively aid intelligence work. Voluminous amounts of data in the overall TECS platform (which includes the associated SEACATS platform) combine to create one of the largest data depositories utilized by U.S. Law Enforcement (including Federal, State, or Local agencies). When integrated with efficient Targeting and/or Analysis tools and other Enforcement and Non-Enforcement databases, the result is the creation of highly efficient Targeting and Analysis platforms with access to one of the largest Law Enforcement information warehouse.

Page 60: The report cites an FBI case where valuable intel analysis was not "pushed" to FBI leadership via their Automated Case System resulting in the 9/11 attack.

The report compares the TECS system to the FBI's ACS system. TECS and ACS are case management tools, not intelligence platforms. However, systems have been developed and are in place within DHS to mine TECS for case related data. *The IG did not conduct a comparative study of ACS and TECS or of any of the tools designed to mine TECS data.*

Page 61: The first paragraph states that *"...most CBP employees cannot retrieve IIRs because they lack the necessary security access."*

It should be noted that the same is true for the U.S. Coast Guard and other agencies. In addition, IIRs are usually disseminated via classified communication systems. These systems are not available at the CBP field level. However, CBP personnel, such as those at the NTC and the Office of Intelligence, with appropriate clearance and access to classified material, do receive IIRs and, where relevant, disseminate sanitized information to the field. This has not changed from the processes in place prior to the creation of DHS.

The Role of the Directorate of Border and Transportation Security

Page 65: The third bullet states: *"CBP managers believed that making United State Visitor and Immigrant Status Indicator Technology (US-VISIT) an independent entity and not placing it under the control of CBP was a bad decision."*

US-VISIT began as "Entry/Exit", an INS program, and was originally staffed with only six personnel. When DHS was created, Secretary Ridge and Undersecretary Hutchinson immediately recognized the importance of the effort and the need for a critical infusion of resources, high level support, and direct management oversight. A senior executive with experience implementing multibillion dollar information system modernization efforts was hired to rally various stakeholders, implement new business processes and institute change across many

organizations. Because of the broad enterprise approach, US-VISIT has been able to integrate with State, CBP, ICE, USCIS, and the FBI and others across the Federal government. US-VISIT has been applauded internationally and is considered a highly successful USG program, recently winning the Excellence in Government Award. With US-VISIT, DHS has implemented a major enhancement to national security and the integrity of the immigration system at the nation's POEs and through the Department of State's BioVisa program overseas while facilitating legitimate travel and trade and protecting privacy.

Pages 66-67: The report recommends consideration of a transfer of Federal Protective Service (FPS) to the United States Secret Service, DOJ's U.S. Marshals Service, or DHS' Office of Security.

Under 40 U.S.C. § 1315(b)(1), as amended by the Homeland Security Act (HSA), Section 1706, the Secretary of DHS has the authority to be the protector of property owned or occupied by the Federal Government and persons on the property. That authority was delegated, from the Assistant Secretary of ICE, to the Director of the Federal Protective Service. That delegation, and the HSA, expands the jurisdiction of FPS from GSA property to all federal property.

FPS belongs in a DHS law enforcement organization as part of the Prevention and Response elements of the Department's mission to secure the Homeland. The transfer of the FPS to an agency that has a primary law enforcement mission has already yielded many benefits in support of the FPS primary mission to protect the buildings, grounds, and property that are owned, occupied, or secured by the Federal government, and persons on the property. In addition, within the ICE law enforcement framework, specialized law enforcement skills and assets are being shared, leveraging the strengths of the individual programs and avoiding costly duplication.

Moreover, the IG does not provide any explanation as to why the three recommended agencies are better equipped to manage FPS.

Forensic Document Laboratory

Page 68: The last paragraph previously stated: *"We recommend aligning the FDL with CBP." "INS' FDL was considered a premier international authority on the subject of fraudulent travel documents." "Comprised largely of former inspectors with years of experience in examining documents, it serviced INS inspectors and investigators with forensic examination of travel documents and training."*

The Forensic Document Laboratory (FDL) continues to serve as a premier international authority under ICE's leadership. It is the premier international authority on the subject of not only fraudulent travel documents, but also fraudulent identity documents.

The report's discussion of the FDL, however, reveals a lack of understanding of the primary mission of the FDL, which is to provide forensic examinations of seized travel and identity documents to determine their authenticity and legitimacy. These examinations are completed by highly trained, professional, and certified forensic document examiners of the forensic section, while strictly observing all applicable rules of evidence. The examiners routinely provide expert testimony about their examination findings in criminal proceedings.

The FDL is *not* comprised largely of former inspectors as the OIG states in their report. In fact, FDL employees who are former INS inspectors make up less than 50% of the staff. The FDL is comprised of two sections: (1) the Forensic Section, which is currently comprised of 26 employees (19 forensic document examiners, 4 fingerprint specialists, 2 forensic photographers,

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and 1 evidence technician); and (2) the Operations Section, which is comprised of 14 intelligence officers and 1 intelligence aide. All of the Intelligence Officers in the Operations Section are former Inspectors, but only 1 of the Forensic Section's employees is a former inspector and that employee made the personal decision to enter the forensic examiner training program to become a forensic document examiner.

The Operations Section of the FDL uses information gathered from FDL forensic document examiners during the course of their forensic examinations, information gathered while providing assistance to the field, as well as from the CBP Fraudulent Document Analysis Unit (FDAU) (since its creation by CBP). (The FDAU itself is a small office.) The information, which includes "lessons learned" and raw intelligence, is used by the Operations Section to create the various intelligence alerts and reference guides, and provide training. The intelligence alerts and reference guides are distributed worldwide by the FDL.

It is important to note that twice a month, an FDL employee from the Operations Section goes to the FDAU to review documents seized by CBP and sent to the FDAU. Any documents required by the FDL are turned over to the FDL by the FDAU. The FDL uses many of these documents to prepare Intelligence Alerts and other reference materials. Some of the documents are placed in the FDL's exemplar reference library for future use by the Forensics Section and Operations Section personnel. Others are used by the Operations Section to conduct fraudulent document recognition training.

Pages 68-69: The report states, *"In the past, inspectors, Border Patrol agents and others in INS would forward seized documents to the FDL for examination. FDL officials said that 90 percent of the information that they used to develop their intelligence products and employ in their forensic work came from the inspectors."*

Border Patrol agents continue to forward seized documents to the FDL for examination. Any document requiring a forensic examination is sent directly to the FDL. Inspectors, Border Patrol agents, and others from DHS and other federal, state, and local agencies continue to send documents to the FDL for examination. There is no question that a considerable amount of the information used to develop FDL intelligence products comes from inspectors. The personnel on the front lines are the ones who intercept the majority of fraudulent travel and identity documents and will be the first to see potential new schemes; however, this is not true for forensic examination work.

ICE, CIS, and other federal agencies submit considerably more cases to the FDL for forensic examination than does CBP. The far majority of forensic cases originate from within ICE, because while CBP may interdict subjects with fraudulent travel and identity documents, the criminal investigators of ICE conduct the investigations and seek the subsequent prosecution of the subjects using the documents. Additionally, the ICE criminal investigators investigate and seek the subsequent prosecution of persons involved in the manufacture and or distribution of fraudulent travel and identity documents.

Page 69: The first paragraph states, *"In 2004, FDL officials, acknowledging the findings by the National Commission on Terrorist Attacks Upon the United States (9/11 Commission) that identified shortcomings in travel document analysis, submitted plans to ICE management to create a trend analysis capability within FDL. ICE took no action on FDL's proposals."*

This statement is misleading. ICE could not take action due to ICE's budget restraints. These restraints, which are acknowledged in footnote number 3 on page 2 of the report, would not allow for the hiring or transfer of the personnel necessary to take on this additional mission.

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Page 69: The last paragraph notes that the majority of the forensic examination work done by the FDL is completed for ICE.

Although CBP inspectors and CIS officers initially seize the documents in question, ICE criminal investigators submit the documents to the FDL for forensic examination since they will be used as evidence in a court proceeding. In fact, thousands of documents are seized by CBP each year which are not submitted the FDL for examination since they will not be used either for court proceedings or as exemplars.

Page 69: The last paragraph previously stated that “[the Image Storage and Retrieval System] ISRS is a database of fraudulent travel documents that have been used in the past by aliens to attempt illegal entry into the United States.”

This statement is incorrect. ISRS is a database of images of legitimate “green cards” and some border crossing cards. The purpose of ISRS is to compare suspected fraudulent or counterfeit “green cards” and border cards to the images of the legitimately issued cards to see if the photographs and fingerprints on the cards match. This is not a forensic process. The Operations Section provides the service to any government official requesting the service. In the past, the FDL provided this service because many of the CBP Ports of Entry (POE) did not have this system available. To this day, the FDL continues to provide this service to POE’s that do not have the system and to POE’s that do have the system when CBP officers trained in the use of the system are not available or the system is down.

Further, the report states that “[t]hese queries [ISRS queries] are not captured so the daily support that FDL provides to the CBP inspectors is understated.” This statement is incorrect. The numbers quoted in the beginning of the paragraph are for forensic examinations. ISRS queries are a service provided by the FDL Operations Section and have nothing to do with forensic examinations provided.

Page 70: The first paragraph states: “Much of FDL’s success is due to its recruitment of veteran inspectors with extensive experience in identifying fraudulent documents. However, ICE has changed the FDL’s hiring policy, requiring that the FDL hire only investigators or intelligence analysts. Absent a change in recruiting practices to allow the FDL to hire former inspectors, its ability to continue to provide expert forensic service is likely to erode.”

ICE has not changed the hiring policy of the FDL. ICE has recently approved the hiring of five positions at the FDL to fill vacancies. None of these positions will be filled with either investigators or intelligence analysts. The FDL will continue to recruit, hire, and train highly capable personnel and will continue to provide a variety of expert services, including former inspectors.

Page 70: The second paragraph states, “FDL and FDAU provide complimentary examination and analysis of fraudulent documents.”

The FDL and FDAU provide different information and services to their customers. The FDL does not conduct trends analyses of fraudulent documents; rather, it conducts forensic examinations of suspect documents. The FDAU does not conduct forensic examinations of fraudulent documents; rather, it conducts trends analyses of fraudulent documents seized at the ports of entry. While the services provided by each are closely related, they are not complementary. In addition, it must be noted that the FDAU only contains four employees, as compared to the much larger FDL.

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